

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

|  |   |                          |
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| In the Matter of                       | ) |                          |
|  | ) |                          |
| D H                                    | ) | OAH No. 15-1244-PFD      |
| <hr style="width:45%; margin-left:0"/> | ) | Agency No. 2015-009-0469 |

**DECISION**

**I. Introduction**

D H’s application for a 2015 Permanent Fund Dividend (PFD) was denied because she spent more than 180 days outside of Alaska during 2014, the qualifying year for purposes of the 2015. After a full hearing and upon careful consideration of the evidence, the denial is upheld because Ms. H’s absences from Alaska during 2014 were not for the reasons deemed “allowable” under the statutes governing the PFD program.

**II. Facts**

D H is a twenty year-old Alaskan with a longstanding interest in working with children, particularly in the area of character development. While in high school, Ms. H worked part-time for a faith-based character development organization called No Name.<sup>1</sup> In September 2013, at age 18, Ms. H entered into an internship program in Oklahoma with a faith-based organization called “In The Gap.”

According to its website, “[t]he mission of In The Gap is to train and equip youth and young adults to effectively influence children to model integrity, be positive leaders, and passionately love Jesus Christ.”<sup>2</sup> The website identifies “the purpose of In The Gap’s Internship Mission Program” as follows:

[T]o challenge young adults to grow in their relationship with the Lord, become grounded in a biblical worldview, and live as salt and light in the world. We offer effective tools and hands-on experience in order to communicate truth in both Christian and secular settings in Oklahoma City, at home, and around the world.<sup>3</sup>

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<sup>1</sup> Testimony of Ms. H and Ex. 10, pp. 5, 8. According to its website, “No Name is a discipleship ministry designed to equip young ladies to use the years of their youth fully for Christ.” [http://no\\_name.info](http://no_name.info) (last visited November 2, 2015).

<sup>2</sup> <http://inthegap.org/about/mission/> (last visited October 29, 2015). During the hearing, the parties stipulated that the Administrative Law Judge may take official notice of the contents of In The Gap’s website.

<sup>3</sup> <http://inthegap.org/get-involved/intern/> (last visited October 29, 2015). According to its website, In The Gap’s Internship Mission Program is available to “dedicated Christian young adults who are aged fifteen

In The Gap interns receive instruction from program staff on topics such as communication, leadership and mentoring, while also working as interns in inner city public schools. In The Gap is not an accredited educational institution and does not grant “credits” that would be transferrable to educational institutions.<sup>4</sup>

“In The Gap” interns advance through four levels of the internship program, each one focusing on a different skill, such as communication, leadership and mentoring. This appeal concerns Ms. H’s participation in 2014, during which she completed levels 2, 3, and 4 of the program. Each of those levels involves an unpaid internship of between seven and ten weeks’ duration, and roughly six hours per week of instructional training.<sup>5</sup>

In The Gap Executive Director Chad Christianson praised Ms. H’s participation in the program in glowing terms, noting her “creativity, diligence, wisdom and joyfulness,” as well as her “outstanding demonstration of sincerity, virtue, discernment, and gratefulness during her internship experience.”<sup>6</sup>

On January 6, 2015, Ms. H submitted an online application for a 2015 PFD, answering yes to whether she had been absent from Alaska for more than 180 days during 2014.<sup>7</sup> In a supplemental section of the application, she identified the three absences, and provided a narrative explanation for each. For an absence that began January 7, 2014 and ended March 9, 2014, Ms. H wrote: “I was teaching a character development curriculum as a volunteer in public schools while learning to be an effective communicator.” For an absence that began March 26, 2014 and ended May 28, 2014, she wrote: “I was teaching a character development curriculum as a volunteer in public schools while learning to be an effective leader.” Finally, for an absence that began September 3, 2014 and ended

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through mid-twenties, have a heart to know God, and desire to minister to children.” *Id.* No prior experience or skill-set is required. *Id.* (“no previous experience required;” “We are not looking for your existing public speaking abilities, people skills, or teaching proficiencies. Rather, we are looking at where your heart is, and whether or not you are willing to submit yourself to an environment designed to help you grow — spiritually, personally, and professionally”).

<sup>4</sup> Testimony of Ms. H; Ex. 4, p. 1; Ex. 10, p. 3; Ex. 14.

<sup>5</sup> Ex. 3, pp. 4-6. Level 2 Interns receive 36 hours of instructional training and complete a seven-week internship. Ex. 3, p. 4. Level 3 Interns receive 42 hours of instructional training, complete a seven-week internship, and teach Level 1 Interns. Ex. 3, p. 5. Level 4 Interns receive 55 hours of instruction and complete a ten-week internship. Ex. 3, p. 6. Interns in Levels 3 and 4 also provide instruction to Level 1 interns. See Ex. 3, pp. 5-6.

<sup>6</sup> Ex. 3, p. 6.

<sup>7</sup> Ex. 1, p. 1.

November 24, 2014, she wrote: “I was teaching a character development curriculum as a volunteer in public schools while learning to be an effective mentor.”<sup>8</sup>

The Division denied Ms. H’s PFD application on the basis that her absence in excess of 180 days was not for one of the allowable exceptions under AS 43.23.008(a), and exceeded the number of days for which an absence “for other reasons” is allowed.<sup>9</sup> Ms. H timely requested an informal appeal, and, after her informal appeal was denied, timely requested a formal appeal.<sup>10</sup>

At both appeal levels, Ms. H argued that her absences were for “professional, vocational or specific training” under AS 43.23.008(a)(2).<sup>11</sup> Ms. H argued she had been “receiving professional training that isn’t offered in Alaska,” and that “no program in Alaska offers the specific training [she] received in Oklahoma.”<sup>12</sup> Ms. H provided certificates documenting her completion of “Levels” 2, 3, and 4 “of the In The Gap Missionary Internship Program,” and also provided for each level a document titled “In The Gap Internship Course Syllabus.”<sup>13</sup> Ms. H also submitted letters from In The Gap’s Executive Director Chad Christianson, who wrote that Ms. H’s absence for In The Gap “was to receive specific professional training on a full[-]time basis,” and that “this training is only offered in Oklahoma City as part of our training courses at In The Gap.”<sup>14</sup>

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<sup>8</sup> Ex. 1, p. 2. For each of the three absences, Ms. H selected absence code “K – other,” from a list of possible choices including “B - College/Professional Education.” *Id.*; <http://pfd.alaska.gov/Eligibility/Absence-Guidelines> (last visited October 30, 2015). Ms. H testified that she intentionally chose this item because she recognized the program was neither “postsecondary education” nor a governmental-based internship (presumably a reference to the statutory provision allowing absences for certain federally-sponsored educational fellowships).

<sup>9</sup> Ex. 2, p. 1.

<sup>10</sup> Ex. 9, pp. 1-3; Ex. 10.

<sup>11</sup> Ex. 3, p. 2 (“The volunteer work that I did was a requirement to pass the levels of specific education I was going through. I was in full time professional training. 150 hours were spent in training, 73 hours were spent in daily classroom preparation, 200 hours [were] spent in personal study hours, and 525 hours [were] spent in student teaching”).

<sup>12</sup> Ex. 3, p. 2.

<sup>13</sup> Ex. 3, pp. 4-9.

<sup>14</sup> Ex. 3, p. 3. (“She was under our training for a total of seven months throughout [2014] learning communication, teaching, leadership and mentoring skills”). Mr. Christianson’s second letter argued that Ms. H had had “a career teaching character development prior to her professional training with In The Gap,” because she “taught character development with No Name prior to her first session of professional training with In The Gap.” Ex. 10, p. 5. A letter from T N of No Name likewise opined that Ms. H had “a career teaching character development prior to her professional training with In The Gap,” in that she had “helped staff several conferences by being a discussion leader” on topics of character development, “was actively involved [in] teaching during No Name mentoring meetings” on these topics, and had helped coordinate two of the No Name conferences. Ex. 10, p. 4. Ms. H also submitted a flyer for a two-day April 2013 No Name conference in No Name, Alaska, for which she is listed as a contact person, and a brochure for a “Character Camp” for which she directed two sessions during the summer of 2014. Ex. 10, pp. 5-8. Because the

At the formal appeal level, the Division requested and obtained a formal opinion letter from the Alaska Commission on Postsecondary Education (ACPE) about whether a financial-aid eligible program comparable to In The Gap’s program exists within Alaska.<sup>15</sup> In a letter dated October 14, 2015, ACPE Financial Aid/Servicing Supervisor Joann Reiselbach responded that “In the Gap, Inc. is a faith-based organization offering internships, rather than a post-secondary education institution offering vocational education to the general public.” Accordingly, ACPE indicated that it was unable to “make any assessment of the Missionary Internship Program offered by In the Gap, Inc.”<sup>16</sup>

A hearing was held on October 29, 2015. Ms. H appeared in person and represented herself ably, with the occasional assistance of her mother, B H. The Division was represented by Bethany Thorsteinson. Neither party called any additional witnesses. The record closed at the end of the hearing, and the matter was taken under advisement.

### **III. Discussion**

The qualifying year for the 2015 dividend was 2014. In order to qualify for a Permanent Fund Dividend in 2015, Ms. H had to have been physically present in Alaska all through the qualifying year, or absent for one of the allowable reasons listed AS 43.23.008.<sup>17</sup> “Regardless of whether the absences were for good reasons, unless the absences fall within one of the [16] categories listed in AS 43.23.008(a) as those categories have been defined by regulation,” Ms. H is not eligible to receive a dividend for 2015.<sup>18</sup>

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decision below turns on other criteria, it is not necessary to address whether Ms. H’s part-time involvement in a youth organization during high school constitutes a “profession.”

<sup>15</sup> Ex. 11, p. 2. The Division had previously requested an informal opinion on this topic from ACPE at the informal appeal level. Testimony of Ms. Thorsteinson; Ex. 5. At that time, ACPE had indicated that a seemingly comparable program exists through Anchorage Christian College (ACC). Ex. 11, p. 4. While the ACC program is an accredited degree-granting institution, and In The Gap is not, she noted, “both programs are Christian-based, focus on teaching youth and have a hands-on internship component.” The ACPE email also added that “it does appear that In the Gap is largely internship[-]based with a small classroom component, while ACC is largely classroom[-]based with a smaller internship component.” *Id.* In her request for formal appeal, Ms. H argued that the two programs were not comparable. Ex.10, p. 2.

<sup>16</sup> Ex. 11, p. 1.

<sup>17</sup> AS 43.23.008(a)(17) provides a “catch-all” exception for absences outside of the 16 specifically enumerated options but which are “consistent with an intent to remain an Alaska resident.” However, those absences cannot exceed, at most, 180 days. Because Ms. H’s absences indisputedly exceed 180 days, she is not eligible for the catch-all exception.

<sup>18</sup> *In re: J. and D.B.*, OAH No. 05-0282 (Commissioner of Revenue 2006), p. 2.

Ms. H relies on the allowable absence category set forth in AS 43.23.008(a)(2). This section allows an individual to retain PFD eligibility despite an absence if the individual was:

Receiving vocational, professional, or other specific education on a full-time basis, for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state.<sup>19</sup>

The Division’s regulations further define this category as follows:

For the purposes of AS 43.23.008(a)(2), receiving vocational, professional, or other specific education on a full-time basis means attending a program for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state at an educational institution eligible to participate in financial aid programs administered by the Alaska Commission on Postsecondary Education.<sup>20</sup>

Ms. H urges that her participation in the In The Gap internship program was “professional development” furthering her existing “career” in “character development.”<sup>21</sup> As a threshold matter, however, even if In The Gap can be viewed as providing its interns with a “professional development” experience, that does not make the internship program an allowable absence under AS 43.32.008(a)(2) and its implementing regulation.

To qualify for an allowable absence under the regulation, “[t]he [professional] education must be at an educational institution.”<sup>22</sup> This is so because both the statute and the regulation specifically define the type of qualifying educational opportunities in terms of those programs for which the Alaska Commission on Post-Secondary Education (ACPE) might identify a comparable program within Alaska. As a prior Commissioner of Revenue decision has held:

It would make little sense to read 15 AAC 23.163(c)(2) as providing an allowance for attending a program in another state at other than an educational institution, when the regulation provides that a precondition for availability of the allowable absence is that no educational institution in Alaska offers a comparable program.<sup>23</sup>

Thus, in *In re: T.T.*, participation in the “Disney College Program Internship” – which pairs three hours per week of coursework with a full-time internship experience --

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<sup>19</sup> AS 43.23.008 (a)(2).

<sup>20</sup> 15 AAC.23.163(c)(2).

<sup>21</sup> See Ex. 10.

<sup>22</sup> *In re: D.X.*, OAH Case No. 12-0131-PFD (Commissioner of Revenue 2012).

<sup>23</sup> *In re: R.K.*, OAH Case No. 10-0541-PFD (Commissioner of Revenue 2011).

was not deemed to be an allowable absence under (a)(2).<sup>24</sup> The regulations implementing (a)(2) specifically require a full-time educational experience, and “[t]he fact that a job provides excellent experience and teaches a person a great deal does not turn it into ‘education.’”<sup>25</sup> Rather, and as here,

Ms. T’s situation is similar to that of many other Alaskans who have left the State for temporary job experiences, such as AmeriCorps, that help them grow as professionals or future professionals; in general, these individuals retain their Alaska residency but are not able to retain PFD eligibility while they are away.<sup>26</sup>

Nor was an allowable absence available in *In re: R.K.* for a fellowship with the American Civil Liberties Union.<sup>27</sup> Because the ACLU “is not an educational institution,” the fellowship program, no matter how meaningful or valuable to its participants, does not provide an allowable absence under (a)(2).

To accept Ms. H’s position, moreover, would require an expansive reading of Section 008(a)(2) that is inconsistent with the language of the statute, the language of the regulation, and numerous prior decisions. As those decisions explain, the Division is required to follow the narrow confines of the allowable absence categories, and does not have discretion to allow an absence, no matter how worthy the reason for that absence, that does not fit squarely within one of the specified categories.

Each year, people leave Alaska for reasons like volunteering in other states and countries, performing church missions, taking advantage of unique business opportunities, high-level sports competitions[,] caring for sick or dying friends, or caring for the children of friends with health or other problems. All of these may be good reasons to leave Alaska, but under the law, if the total absences exceed 180 days in the qualifying year, the person will not be eligible for a dividend in the next year, regardless of how laudable the reason for the absence.<sup>28</sup>

In considering the In The Gap internship within the broader context of reasons why idealistic young people sometimes leave Alaska in pursuit of training, self-betterment, or service, it is noteworthy that the Alaska Legislature chose to specifically include as an

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<sup>24</sup> *In re: T.T.*, OAH Case No. 13-1691-PFD (Commissioner of Revenue 2013). This outcome may be contrasted with the outcome in *In re: D.E.*, in which an absence for study at the John Jay Institute was deemed eligible. Students in that program, the decision notes, are “full-time students in a traditional academic classroom setting.” *In re: D.E.*, 11-0393-PFD (Commissioner of Revenue 2011).

<sup>25</sup> *Id.*, p. 3.

<sup>26</sup> *Id.*, p. 3.

<sup>27</sup> *In re: R.K.*, 10-0541-PFD (Commissioner of Revenue 2010).

<sup>28</sup> *In re: J. and D.B.*, OAH No. 05-0282 (Commissioner of Revenue 2006), p. 2.

allowable absence the narrow category of “serving as a volunteer in the federal peace corps program,”<sup>29</sup> and also that of “participating for educational purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State.”<sup>30</sup> If the legislature had wanted to include all types of service-based learning, or volunteer endeavors, it could have done so. Indeed, the legislative history shows an explicit acknowledgement that only a narrow category of volunteers were being included even though “there is no allowable absence for a myriad of other worthwhile volunteer and exchange positions.”<sup>31</sup>

Ms. H now seeks to extend (a)(2) so broadly that it would encompass all manner of internship and service learning programs, offered outside of traditional educational settings and based primarily on service activities, not classroom study. While such programs may offer young Alaskans – and the communities in which they serve – valuable experiences, they are not “education” on a “full-time basis” at an educational institution. Indeed, many such programs undoubtedly offer experiences closer to that of the Peace Corps than to full-time vocational or professional education. Likewise, many such programs may be closer in nature to the types of governmental-sponsored fellowship opportunities that are, in narrow circumstances, allowable absences. But the legislature’s decision to limit allowable absences in the manner undertaken by (a)(14), in the case of peace corps-type experiences, and (a)(16), in the case of certain types of fellowships, precludes an expansive reading of (a)(2) so broad that it would swallow those exceptions.

Neither the PFD Division nor the administrative law judge has the legal authority “to grant PFDs to people who were absent for reasons, no matter how good, that are not allowable” under AS 43.23.008(a) and its regulations.<sup>32</sup> Ms. H is to be commended for having chosen a life path of service to those less fortunate. The nobility of her chosen work, however, does not entitle her to a dividend in this case.

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<sup>29</sup> AS 43.23.008(a)(14).

<sup>30</sup> AS 43.23.008(a)(16).

<sup>31</sup> See, e.g., SB 104 Senate State Affairs Committee Minutes, April 21, 2005. See also, HB 127 House State Affairs Committee Minutes, March 3, 2005 and March 5, 2005.

<sup>32</sup> See, e.g., *In re: J. and D.B.*, OAH No. 05-0282 (Commissioner of Revenue 2006), p. 2.

**IV. Conclusion**

Because Ms. H’s absences from Alaska during 2014 do not fall within any of the enumerated allowable absences under the PFD statute, she is not eligible for the 2015 PFD. The Permanent Fund Dividend Division’s decision to deny Ms. H’s application for a 2015 PFD is therefore AFFIRMED.

Dated: November 5, 2015

*Signed* \_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1<sup>st</sup> day of December, 2015.

By: *Signed* \_\_\_\_\_  
Signature  
Cheryl Mandala \_\_\_\_\_  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication.]