

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

In the Matter of)	
)	
K Q)	OAH No. 16-0592-PFD
_____)	Agency No. 2015-065-2983

DECISION

I. Introduction

K Q was denied her 2015 permanent fund dividend because she was gone from Alaska for more time than is allowed under statute during the qualifying year of 2014. Although Ms. Q was settling the estates of her uncles during the time that made her ineligible, settling an estate of an uncle is not an allowable absence. The time she spent settling her uncles’ estates must be counted against her total cumulative time absent from the state, which puts her over the limit for dividend eligibility. Therefore, the denial of her 2015 dividend is affirmed.

II. Facts

K Q is a long-time Alaska resident. In December 2013, however, Ms. Q left Alaska to deal with complex estate matters regarding her uncles’ estates. For many reasons, only she could serve this function, and her presence was required. She remained outside of Alaska and worked on estate matters in the lower 48 for a total of 100 days in 2014.¹

Unfortunately, while in Idaho, Ms. Q became very ill. She had to obtain intensive medical care that required her to remain in the lower 48. Her medical care kept her outside Alaska for an additional 250 days during 2014.²

Because Ms. Q was outside Alaska in 2014 for more time than is allowed under the rules for qualifying for a permanent fund dividend, the Permanent Fund Dividend Division of the Alaska Department of Revenue denied her 2015 dividend. Ms. Q appealed. A telephonic hearing was held on July 6, 2016.

III. Discussion

To qualify for a dividend, an Alaska resident must be physically present in Alaska for 180 days during the year before the dividend year, unless the absence is for one of the “allowable

¹ Division Position statement at 3, citing Exhibit 7.
² *Id.*, citing Exhibits 2, 6.

absences” listed in the statute.³ A person can be out of Alaska for more than 180 days and still be a resident, but, unless the absence is allowed, the person is not eligible for a dividend.⁴

Here, the Division agrees that Ms. Q’s medical treatment is an allowable absence. Under statute, however, Ms. Q may be gone from the state for only 45 days in addition to the cumulative absence that was required for her medical treatment or other allowable absence.⁵ This 45-day rule is hard and fast. It does not matter whether a person is on vacation or business, or whether the time in excess of 45 days occurs before or after the event that caused the absence of over 180 cumulative days. Because Ms. Q was gone for more than 45 days in addition to the time she was required to be gone for medical treatment, and because the additional time was not for one of the allowable purposes permitted under statute, the Division denied her dividend.

Ms. Q does not dispute the Division’s calculation of her allowable absence for medical treatment. Nor does she dispute that she was gone from Alaska for more than 45 days in addition to her allowable absence in 2014. She argues, however, that her time spent settling her uncles’ estates is comparable to one of the allowable absences, and therefore should be permitted. She points out that settling an estate is an allowable absence under AS 43.23.008(a)(8).⁶ Although the statute specifies that the absence is allowable for settling the estate of a resident’s “deceased parent, spouse, sibling, child, or stepchild,” in Ms. Q’s view, given that no one else could settle her uncles’ estates (neither had a wife or children), her situation is the same as that explicitly addressed by AS 43.23.008(a)(8). In addition, Ms. Q points out that application of the statute to her would be unfair—if she had not become ill, her 100-day absence while settling her uncles’ estates would not have cost her a dividend.

³ AS 43.23.005(a)(6); AS 43.23.008.

⁴ *In re K.R.F.*, OAH No. 09-0249-PFD at 4 (Dep’t of Rev. 2009).

⁵ AS 43.23.008(17)(C). Under this statute,

(a) Subject to (b) and (d) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent . . . (17) for any reason consistent with the individual’s intent to remain a state resident, provided the absence or cumulative absences do not exceed . . . (C) 45 days in addition to any absence or cumulative absences claimed under (1) - (16) of this subsection if the individual is claiming an absence under (4) - (16) of this subsection.

⁶ (a) Subject to (b) and (d) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent . . . (8) settling the estate of the individual’s deceased parent, spouse, sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days.

Sometimes we can find exceptions to seemingly hard-and-fast laws. For example, in some cases, vague wording, legislative history, or an incomplete or broadly-inclusive list might allow an extension of the statutory criteria. Here, however, the law is clear, specific, and limited.⁷ It does not include uncles or aunts. Previous interpretations of AS 43.23.008 by the Commissioner of Revenue have refused to make exceptions to the 45-day rule even when strict application of the rule could be considered unfair.⁸ Although Ms. Q has made good points, the law does not permit me to make an exception for a person in her situation. I must apply the law as written.⁹ Because Ms. Q's absence in excess of her medical absence did not fit the specific language of the allowable absence for settling an estate, and because she was gone in 2014 for more time than allowed for dividend-eligibility, the denial of her 2015 dividend is affirmed.

IV. Conclusion

The Permanent Fund Dividend Division's denial of K Q's 2015 permanent fund dividend is affirmed.

DATED this 25th of July, 2016.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

⁷ In interpreting a statute, courts will infer that the legislature intended to exclude items omitted from a clearly designated list of items in a statute. *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991) (“where certain things are designated in a statute, ‘all omissions should be understood as exclusions.’” (quoting *Puller v. Municipality of Anchorage*, 574 P.2d 1285, 1287 (Alaska 1978) (quoting 2A C. Sands, *Sutherland Statutory Construction* § 47.23 (4th ed. 1973) (footnotes omitted by court))).

⁸ See, e.g., *In re W.H. & E.G.S.*, OAH 09-0308-PFD (Dep’t of Rev. 2009) (denying dividend even though vacation absence was less than 180 days because total absences exceeded 180 days of which more than 45 days were in excess of time spent dealing with parent’s death and settling parent’s estate); *In re N.C. & M.S.*, OAH No. 09-0063-PFD (Dep’t of Rev. 2009) (denying dividend to couple gone more than 180 days even though 97 days were spent settling parental estate and vacation days were taken before parent had died).

⁹ Cf., e.g., *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007) (“the constitutionally decreed separation of powers [] prohibits this court from enacting legislation or redrafting defective statutes”).

Adoption

Under a delegation from the Commissioner of Revenue and under the authority of AS 44.64.060(e)(1), I adopt 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 18th day of August, 2016.

By: Signed _____
Name: Stephen C. Slotnick
Title: Administrative Law Judge

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