

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

| | | |
|-------------------------------------|---|--------------------------|
| In the Matter of: |) | |
| |) | |
| K C |) | |
| |) | OAH No. 16-0644-PFD |
| <u>2015 Permanent Fund Dividend</u> |) | Agency No. 2015-062-4773 |

DECISION

I. INTRODUCTION

K C submitted an application for a 2015 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division denied her application because she was absent for more than 180 days during the 2014 qualifying year.² Ms. C appealed.

Based on the evidence in the record, Ms. C is not entitled to receive a 2015 PFD. The Division’s decision is therefore upheld.

II. FACTS

A. Ms. C’s 2014 whereabouts.

Ms. C is a life-long Alaska resident.³ Ms. C was absent from Alaska for 302 days during 2014.⁴ In the latter part of the year, Ms. C spent 110 days at Harvard University as a full-time student.⁵ She spent January 1 – June 21, 2014, in Florence, Italy with her family.⁶ While in Florence, Ms. C attended an art history class with F S, and completed studio art classes with Z J D.⁷ Ms. C did not receive academic credit for these classes. The classes were not offered through a school and did not result in any certification. The Division categorized the 171 days that Ms. C resided in Florence as “unallowable secondary education.”⁸

Ms. C also completed rigorous courses through Stanford Online High School through June 8, 2014.⁹ SOHS classified Ms. C as a part-time 12th grade student.¹⁰ Ms. C, however,

¹ Exhibit 1.

² Exhibit 6. Originally, the Division denied her application because she was absent from Alaska with her parents, who the Division determined took actions to sever their residency. *See* Ex. 3.

³ Residency requirements and PFD eligibility requirements differ. *Brodigan v. Alaska Dep’t of Revenue*, 900 P.2d 728, 733 n.12 (Alaska 1995).

⁴ Ex. 1, p.3. Ms. U, K’s mother, stated that she believed there was an error in the days absent calculation because Ms. C left for Harvard on August 17, not August 18, 2014. Under PFD regulations, August 17 counts as a day in Alaska. *See* 15 AAC 23.163(j).

⁵ Ex. 1, p.3.

⁶ The C family left for Italy on August 3, 2013. Ex. 6, p.2.

⁷ Ex. 9-14.

⁸ Ex. 6, p. 3.

⁹ Ex. 2, pp. 3-5; Ex. 5, p. 7.

testified credibly that the SOHS classes and her art classes equaled or exceeded a full-time class load. Additionally, Ms. C graduated from No Name High School in May 2013, before leaving for Florence.¹¹

B. Procedural history.

The Division denied Ms. C's PFD application on October 2, 2015.¹² Ms. C requested a formal appeal after failing to obtain PFD approval through the Division's informal appeal process.¹³ A telephonic hearing was held on July 12, 2016. Ms. C represented herself, and her mother, L U, testified on her behalf. Pete Scott, PFD Specialist, presented the Division's position. The record was held open for several weeks in order for Ms. C to supply additional information, and allow the Division time to respond.

III. DISCUSSION

Ms. C has the burden of proving that the denial of her PFD was incorrect.¹⁴

In order to be eligible for a PFD, one must be a resident of Alaska and meet several other eligibility criteria. One requirement is to be physically present during the entire qualifying year, or if absent, absent for an allowable reason.¹⁵ One of those allowable reasons is "receiving secondary or postsecondary education on a full-time basis."¹⁶ This is defined as "enrollment and attendance in good standing as a full-time student where participation requires absence from this state"¹⁷ A person who is absent for this reason may be out of Alaska for the number of days she is receiving education on a full-time basis plus an additional 120 days.¹⁸

Ms. C's days at Harvard meet the postsecondary education criteria. The dispute in this matter, therefore, is whether Ms. C's academic pursuits while in Florence qualify as "receiving secondary or postsecondary education on a full-time basis." The Division's position is that the SOHS classes and Florence art classes fail to meet the PFD eligibility requirements.¹⁹ Ms. C

¹⁰ Ex. 2, p. 3.

¹¹ Ms. C finished high school a year early, knowing her family was planning a year abroad. Ms. C explored school options in Florence, but none suited her situation. Based on the advice of an academic counselor and with an eye toward college entrance applications, Ms. C chose to continue her education despite already graduating from high school.

¹² Ex. 3, p. 1.

¹³ Ex. 6; Ex. 7.

¹⁴ 15 AAC 05.030(h).

¹⁵ AS 43.23.005(a)(6).

¹⁶ AS 43.23.008(a)(1).

¹⁷ 15 AAC 23.163(c)(1).

¹⁸ AS 43.23.008(a)(17)(B).

¹⁹ Pre-hearing brief page 4; post hearing brief, page 3, ¶ 4.

asserts that the combination of Florence and SOHS classes meets the requirements, at least within the spirit of the law, and that she should be found eligible for the PFD. The Division's position is more persuasive.

A. SOHS classes did not require Ms. C's absence from Alaska.

Ms. C enrolled in SOHS classes after careful consideration. She understood that she may not find a suitable program in Italy and did not want to take a break from her studies. SOHS allowed Ms. C to take Advanced Placement classes, eventually resulting in college credit, during her family's sabbatical year. The SOHS classes are available to students anywhere in the world, provided they have internet access. Therefore, these online courses do not qualify as an allowable absence under 15 AAC 23.163(c)(1), because they do not require absence from the state.

Furthermore, because SOHS classes do not qualify as an allowable absence, whether Ms. C attended as a full or part-time student is not determinative in this matter.²⁰

B. Ms. C's Florence studies do not qualify as an allowable absence.

Ms. C asserts that her combination of educational pursuits (SOHS and Florence art studies) should qualify as either: 1) "receiving secondary or postsecondary education on a full-time basis," or 2) "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."

A year abroad is undeniably a tremendous educational experience. In Ms. C's case, unfortunately, that experience does not comport with PFD's strict requirements. First of all, Ms. C did not receive credits for her art history and studio art classes in Florence. Second, Ms. C's studies were not connected with any institution of learning. Although Ms. S is a well-recognized art historian who teaches undergraduate courses for Syracuse University, Ms. C's course work was not associated with the school. While there are exceptions to the general rule that enrollment means enrollment for credit, Ms. C's art studies do not warrant an exception.²¹ She was not "enrolled" anywhere for these art classes, whether she received credit for them or not. Ms. C's Florence class work does not meet the secondary or postsecondary education exception.

²⁰ Ms. C could have chosen five classes, or full-time enrollment, in SOHS, but that would have partially defeated the purpose of the time abroad – to learn the language, study the arts, and immerse oneself in the cultural treasure that is Florence.

²¹ See *In re J S*, OAH No. 11-0117-PFD (Comm'r of Revenue 2011).

Further, Ms. C's studies do not qualify under AS 43.23.008(a)(2)'s "vocational, professional, or other specific education." The statute clarifies that the education must be full-time, and that a "comparable program" must not be reasonably available in the state, as determined by the Alaska Commission on Postsecondary Education. There is no doubt that Ms. C's art classes, language studies, and cultural immersion were not available in Alaska. Ms. C's studies, however, were not part of a "program." Prior PFD cases have accepted non-traditional education when some type of certification, diploma, or credit is given at completion.²² Moreover, vocational education must be offered through an educational institution to qualify under the regulation.²³

Lastly, because the Florence art classes are not eligible for consideration, they cannot be combined with her SOHS courses to qualify her for the PFD. Ms. C's situation is distinguishable from *In re M T*. In that case, MT met the full-time student exemption based on a combination of University of Alaska online courses and in person courses at Oregon Institute of Technology. MT was listed as a part-time student at both institutions and the class work counted toward MT's degree.

Likewise, Ms. C's educational situation is distinguishable from *In re J.S.*, where J.S. received a PFD for spent time in Japan.²⁴ J.S. did not receive academic credit, but was conducting research for his Ph.D. In contrast, Ms. C's time and studies in Florence, while an exceptional and worthwhile endeavor from all reports, were not done in pursuit of a degree or certificate.

As the Commissioner of Revenue has held in the past, "no provision in the law...allows the division or the administrative law judge to consider extenuating circumstances on a case-by-case basis."²⁵

IV. CONCLUSION

Ms. C was out of state for a total of 302 days during 2014. Her time at Harvard counts as an allowable absence, but her SOHS and Florence studies do not. Ms. C's days outside of

²² Division's position statement, *In re: T T*, OAH 13-1691-PFD (Comm'r of Revenue 2014).

²³ *In re: D X*, OAH 12-0131-PFD, p.2 (Comm'r of Revenue 2012)(citing *In re R.K.*, OAH 10-0541-PFD, at 8 (Comm'r of Revenue 2011)).

²⁴ *In re J S*, OAH No. 11-0117-PFD (Comm'r of Revenue 2011).

²⁵ *In re: T T*, OAH 13-1691-PFD, at 3 (OAH 2014)(citing *In re S.H.*, 08-0113-PFD, at 4 (Comm'r of Revenue 2008)).

Alaska therefore exceeded the 120 maximum.²⁶ Accordingly, Ms. C is not entitled to receive a 2015 PFD. The Division's decision is affirmed.

Dated this 21st day of September, 2016.

Signed
Bride Seifert
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 and Order 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 19th day of October, 2016.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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

²⁶ See AS 43.23.008(a)(17)(B).