

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

In the Matter of)	
)	
T S. D)	OAH No. 16-1043-PFD
<hr style="width:45%; margin-left:0"/>)	Agency No. 2016-039-2583

DECISION

I. INTRODUCTION

T D is a disabled adult. D D, his mother, is his court-appointed guardian. She is an Alaska resident. She applied for a 2016 Permanent Fund Dividend (PFD) for Mr. D. His application was denied by the Permanent Fund Dividend Division (Division) because Mr. D was not physically present in the state in either 2014 or 2015. Mr. D’s guardian informally appealed the denial to the Division. That informal appeal was denied. Ms. D then requested a formal hearing on Mr. D’s behalf.

The evidence shows Mr. D was placed outside the State of Alaska in 2009 for medical treatment which is not available in-state. The last time he was in Alaska was in December 2013. His medical condition has not allowed him to return to Alaska, even for a short visit, since then. Although it is clear that Mr. D’s guardian would like him to be in Alaska and he has been prevented from returning by circumstances beyond either of their control, his inability to return to Alaska in either 2014 or 2015 means that he is not eligible for the 2016 PFD.

II. FACTS

Mr. D is currently 22 years old. He is severely disabled. He was born in Alaska and resided in Alaska continuously from his birth until June 2009, when he was placed in residential medical treatment outside the State of Alaska. That placement resulted because his medical condition is not treatable in state. The placement was authorized by and is paid for by the Alaska Department of Health and Social Services. Mr. D was able to return to Alaska for short periods in 2010, 2011, 2012, and 2013. He was not medically able to travel to Alaska in either 2014 or 2015. The last time he was physically present in Alaska was December 29, 2013. His mother, who is his court-appointed guardian, would like him to be able to return to Alaska. The State of Alaska has never had custody of Mr. D.¹

¹ Ms. D’s testimony; Exs. 2, 4 – 6.

III. DISCUSSION

In order to qualify for a PFD, a person must be an Alaska resident both on the date of the application² and during the entire qualifying year.³ An Alaska resident is someone who is in the state with the intent to remain indefinitely, or someone who intends to return to the state to remain indefinitely when that person's absence is allowable by statute.⁴ An applicant must normally be physically present in the state during the qualifying year.⁵ Persons who are absent for medical treatment are excused from the normal requirement for physical presence in the state.⁶ Regardless, they are required to have a minimum physical presence in the state. That minimum physical presence consists of having "been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year."⁷

There is a waiver of the 72 consecutive hour requirement for persons who are in the custody of the Department of Health and Social Services in accordance with a court order under AS 47.10 or AS 47.12 and placed outside of the state by the Department of Health and Social Services for purposes of medical or behavioral treatment.⁸

Mr. D's application is for the 2016 PFD. His medical treatment outside the state would still require him to be physically present in the state for a minimum of 72 consecutive hours in either 2014 or 2015. It is undisputed that he did not meet that minimum requirement. His inability to satisfy that requirement was beyond his or his guardian's control. However, the only applicable exception to meet that requirement is for minors in the custody of Health and Social Services, due to being adjudicated children in need of aid or juvenile delinquency, who were placed outside of the state for treatment by Health and Social Services.⁹ Mr. D does not qualify for this exception for two primary reasons: he is not a minor, and he has never been in the state's legal custody.

² AS 43.23.005(2).

³ AS 43.23.005(3).

⁴ AS 43.23.095(7).

⁵ AS 42.23.005(a)(6).

⁶ AS 43.23.005(a)(6) and AS 43.23.008(a)(5).

⁷ AS 43.23.005(a)(4).

⁸ AS 43.23.005(f); Ex. 7.

⁹ AS 47.10 is the portion of the Alaska Statutes governing Health and Social Services' custody of children who were adjudicated as children in need of aid. AS 47.12 is the portion of the Alaska Statutes governing Health and Social Services' custody of children who are adjudicated as delinquents.

IV. CONCLUSION

Mr. D was not physically present in the state for 72 consecutive hours in either 2014 or 2015. This means that he does not qualify for the 2016 PFD, even though his inability to be present in the state during either 2014 or 2015 was the result of his medical condition. The Division’s decision to deny his application for the 2016 PFD is AFFIRMED.

DATED this 20th day of October, 2016.

By: Signed _____
Lawrence A. Pederson
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 2nd day of December, 2016.

By: Signed _____
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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