

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

In the Matter of	)	
	)	
B N	)	OAH No. 16-1067-PFD
_____	)	Agency No. 2016-018-5132

**DECISION & ORDER**

**I. Introduction**

This case is B N’s appeal of the Permanent Fund Dividend Division’s (Division’s) denial of her 2016 PFD application because the Division determined that her absences in 2015 were disqualifying.

B N timely applied for a 2016 permanent fund dividend. The Division determined that Ms. N was not eligible, and it denied the application initially and at the informal appeal level. Ms. N requested a formal hearing. The hearing was held on October 3, 2016. The record closed on October 4, 2015. Bethany Thorsteinson represented the Division and filed a position paper.

Administrative Law Judge Mark T. Handley was appointed to review and decide Ms. N’s appeal. Having reviewed the evidence in the record, the Administrative Law Judge concludes that, because Ms. N’s extended absences from Alaska in 2015 did not, in aggregate, meet the requirements for allowable absences, Ms. N does not qualify for a 2016 PFD.

**II. Facts**

Ms. N is a longtime Alaskan. She has been receiving PFDs since 1982. In 2015, however, Ms. N was absent from Alaska most of the year. Based on the evidence in the record, I find that during 2015, the qualifying year for a 2016 dividend, Ms. N was absent from Alaska for more than 180 days, and that the portion of her 2015 absence when she was absent for vacation exceeded 45 days.<sup>1</sup>

The facts in this case are not in dispute. Ms. N was absent from Alaska for 195 days in 2015. For 179 of the 195 days, she was on vacation. For 16 of the 195 days, Ms. N was caring for her terminally ill father.<sup>2</sup>

At the hearing, Ms. N explained that she lives in a very remote area of Alaska. After being out of the state for 179 days in 2015, she unexpectedly had to leave the state again to be with her

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<sup>1</sup> Division’s Formal Hearing Position Statement page 1 & Exhibit 1.

<sup>2</sup> Recording of Hearing & Exhibits 1 & 6.

father who was dying.<sup>3</sup> The Division agrees that the 16 days Ms. N was absent to be with her father in 2015 met the requirements of Alaska Statute 43.23.008(a)(7), which covers absences for providing care for a terminally ill family member. The dispute between the parties in this case is how the Division interpreted and applied Alaska Statute 43.23.008(a) in reaching its determination that Ms. N was disqualified from 2016 PFD eligibility.<sup>4</sup>

### **III. Discussion**

To be eligible for a PFD, an applicant must meet several requirements. They are listed in Alaska Statute 43.23.005(a). One of the requirements is that the applicant “was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in Alaska Statute 43.23.008.”<sup>5</sup> Alaska Statute 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons.

The Division’s position is that reason number (17) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total 180 days or fewer for any reason, or in addition to an absence serving in the military; 120 days in addition to time in school; or 45 days in addition to absences for other listed reasons.

Reason number (7) allows absences for providing care for a terminally ill family member. Ms. N showed that the 16 days of her 2015 absence were for caring for a terminally ill family member, and the Division agreed. Ms. N did not argue that the remaining 179 days fell under any of the absences listed under Alaska Statute 43.23.008(a)(1)- (16).

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008(a) disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a) provides in pertinent parts:

AS 43.23.008. Allowable absences.

(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

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<sup>3</sup> Recording of Hearing - Ms. N’s Testimony

<sup>4</sup> Ms. N’s request for a formal hearing and the attached explanation is found at Exhibit 6.

<sup>5</sup> AS 43.23.005(a)(6).

(3) serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent, an individual who is

(A) serving on active duty as a member of the armed forces of the United States; and

(B) eligible for a current year dividend;

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(7) providing care for the individual's terminally ill family member;

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(17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (16) of this subsection;

(B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (16) of this subsection but is claiming an absence under (1) or (2) of this subsection; or

(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.

The Division's position as applied to Ms. N's situation is that Alaska Statute 43.23.008(a)(17)(C) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(4)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days, and more than 45 days when not absent for any reason listed under Alaska Statute 43.23.008(a)(4)-(16) during the qualifying year, is not eligible for a PFD.

Ms. N's 2015 absences fall into this category. Ms. N was absent more than 180 days in 2015, and she was absent at least 45 days in 2015 when she was not caring for a terminally ill family member or for any other reason listed under Alaska Statute 43.23.008(a)(4)-(16). Ms. N does not dispute this characterization of her absences in 2015. However, she argues that the Division's interpretation that Alaska Statute 43.23.008(a)(17)(C) disqualifies individuals absent

more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(4)-(16) is wrong.

Ms. N argues the language of Alaska Statute 43.23.008(a)(17) is ambiguous and that the Division's interpretation of that statute does not make sense, and stands the law on its head by disqualifying Alaskans who are absent for reasons specifically allowed by the legislature under Alaska Statute 43.23.008(a)(4)-(16). Ms. N argues that the common sense reading of Alaska Statute 43.23.008(a)(17)(A) & (C) is that Alaska Statute 43.23.008(a)(17)(A) gives all Alaskans the opportunity to be absent for 180 days for any reason; Alaska Statute 43.23.008(a)(4)-(16) provides a list of reasons that Alaskans can be absent without having any impact on their eligibility; and Alaska Statute 43.23.008(a)(17)(C) allows Alaskans an additional 45 days to be absent if the absence is for a reason listed under Alaska Statute 43.23.008(a)(4)-(16). This 45 days is in addition to the 180 days that all Alaskans can be absent under Alaska Statute 43.23.008(a)(4)-(16)(A).

Ms. N also argues that under the Division's interpretation of Alaska Statute 43.23.008(a)(17), does not make sense because there would be no purpose in having Alaska Statute 43.23.008(a)(17)(C) provide that Alaskans can be absent under Alaska Statute 43.23.008(a)(4)-(16)(C) 45 days, because all Alaskans are allowed 180 days. Ms. N points out that under the Division's interpretation, if the allowable, listed-reason absence itself exceeded 180 days, an Alaskan can be gone for that length of time plus 45 days, but other Alaskans receive unequal treatment when their allowable absences are less than 180 days: they are provided no relief or grace period, while listed allowable absences of more than 180 days do get relief under Alaska Statute 43.23.008(a)(17)(C).

Ms. N's position on the 45-day rule is not consistent with the language of Alaska Statute 43.23.008(a)(17)(C). While the language of Alaska Statute 43.23.008(a)(17) can be confusing, because it requires one to work through the interaction of different parts of the statute, it is not ambiguous as it applies to her situation. That provision explicitly provides that only Alaskans who are claiming an absence under Alaska Statute 43.23.008(a)(4)-(16)(A) can be absent for an additional 45 days without disqualification. Because Alaska Statute 43.23.008(a)(17)(A) allows an absence of 180 days for any reason, only those who are absent for more than 180 days need to "claim" part or all of the absence was for a reason listed under Alaska Statute 43.23.008(a)(4)-(16) in order to retain eligibility. If an Alaskan needs to claim that an absence or absences were covered

by Alaska Statute 43.23.008(a)(4)-(16), the language of Alaska Statute 43.23.008(a)(17)(C) limits any additional absence or absences to a total of 45 days in that calendar year.

Only language of Alaska Statute 43.23.008(a)(17)(A) is ambiguous. This is due to the poorly drafted amendment from 2003 giving an additional 180 days to those absent for military service. That language could be read as limiting the 180-day allowable absence to those claiming an absence for military service. This reading would not extend eligibility to Ms. N because she was absent more than 45 days in addition to her absence under Alaska Statute 43.23.008(a)(7).

The legislative history of the 2003 amendment shows that the legislature at that time was aware the 45-day rule was being applied consistent with the Division's current position, and chose to change the rule only for those claiming an absence for military service. On May 17, 2003, the House Finance Committee held a hearing on Senate Bill 148 the legislation that changed the amount of time that Alaskans in the military could be absent in addition to their active duty service from 45 days to 180 days. The committee heard from Larry Persily, Deputy Commissioner, Department of Revenue, who explained how the 45-day rule worked as it then applied to those in the military, and currently applies to those on other listed allowable absences as follows:

Residents are allowed 180 days or military active duty time plus 45 days. Someone called for 90 days of active duty, who took a 60-day vacation [150 total days] would be okay. The bill changes the requirement to military time plus 180 days.<sup>[6]</sup>

The PFD eligibility requirements are very strict regarding absences from Alaska for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a). These provisions are fairly technical, sometimes harsh and difficult to understand, and can catch people by surprise. Unfortunately, although Ms. N had no reasonable choice other than to take this unforeseeable 16-day absence, which was for a reason explicitly covered under Alaska Statute 43.23.008(a)(7), her absence in 2015 disqualifies her from 2016 PFD eligibility.

#### **IV. Conclusion**

Ms. N's 2015 absences from Alaska do not fall within the categories of absences that are allowable for the purpose of PFD eligibility. Ms. N therefore does not qualify for a 2016 PFD. The

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<sup>6</sup> Testimony of Larry Persily, Deputy Commissioner, Department of Revenue on Senate Bill 143, (Chapter 69 SLA 03), Alaska House Finance Committee Minutes May 17, 2003.

decision of the Division to deny the application of B N for a 2016 permanent fund dividend is upheld.

DATED this 12th day of October, 2016.

By: Signed  
Mark T. Handley  
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 10<sup>th</sup> day of November, 2016.

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

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