

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

In the Matter of )  
 )  
 O N ) OAH No. 16-1289-PFD  
 ) Agency No. 2015-066-5215  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

O N applied for a 2015 permanent fund dividend. The permanent fund dividend division found that Ms. N was absent from Alaska for more than 180 days in 2014 and that the absence was not an allowable absence under the dividend program statutes and regulations. The division denied the application. Ms. N appeals.

Because Ms. N was absent from the state for more than 180 days in 2014, and because she has not shown that her absence was an allowable absence, the division’s denial of her 2015 dividend application is upheld.

Ms. N also sought to put the 2013 and 2014 dividend years at issue. However, she did not timely appeal the long-ago denial of her 2013 dividend, and did not even apply for the 2014 dividend. Her eligibility for those years cannot be considered here.

**II. Facts**

O N was born in No Name A. She grew up in No Name A and No Name B. She has an Alaska driver’s license. She considers herself an Alaska resident. She met her future husband N N on No Name C in 2010, and the two married. Mr. N was stationed at No Name C for three years. Although he requested an extension of his stay in Alaska, after he married Ms. N, the Air Force sent Mr. N to No Name D in Italy. Mr. N is now stationed at No Name E in New Mexico. Ms. N lives with her husband, having accompanied him to Italy and New Mexico.<sup>1</sup>

A majority of Ms. N’s other family members still live in No Name A, and Ms. N returns to No Name A every year.<sup>2</sup> Ms. N reports that she was in Alaska from August 29,

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<sup>1</sup> Exhibit 8 at 7 - 9.

<sup>2</sup> Exhibit 4 at 5.

2013 to September 17, 2013; from March 10, 2014 to March 30, 2014; and March 6, 2015 to September 10, 2015.<sup>3</sup> Her son L was born at No Name F in 2015.<sup>4</sup>

On her 2015 dividend application, Ms. N stated that she was absent from the state for more than 180 days in 2014, and did not claim an allowable absence.<sup>5</sup> The division denied Ms. N's application.<sup>6</sup>

Ms. N requested a formal hearing by correspondence. Ms. N and the division both submitted position statements and exhibits before the deadline of December 8, 2016, and neither party submitted a response to the other party's filing. Responses were due December 22, 2016, and the record closed on that date.

### **III. 2015 Dividend**

Ms. N argues that she is an Alaska resident, that Alaska is her home, and that she would be in Alaska but for the fact that the Air Force has stationed her husband elsewhere. She does not argue that her husband is (or ever was) an Alaska resident.

By her own account, Ms. N was absent from the state for more than 180 days in 2014, the qualifying year for the 2015 dividend. Assuming that Ms. N was an Alaska resident throughout 2014 and on the date she applied for a 2015 dividend, the question is whether her extended absence in 2014 an allowable absence under AS 43.23.008.<sup>7</sup>

A. *Was Ms. N's absence from the state in 2014 an allowable absence under AS 43.23.008(a)(17)?*

The permanent fund dividend statutes generally require that a person be physically present in the state throughout the qualifying year to qualify for a dividend. Absences are permitted, but only as allowed under AS 43.23.008.<sup>8</sup>

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<sup>3</sup> Exhibit 8 at 10.

<sup>4</sup> N Exhibits; Division Exhibit 8 at 69 - 70.

<sup>5</sup> Exhibit 1 at 1, Exhibit 4 at 2. Ms. N answered "yes" to the question on the application about whether she was gone from Alaska more than 180 days total. However, she did not go on to complete question 8, which requests a reason for absence code corresponding to one of the categories of allowable absences. When the division requested additional information from Ms. N, she listed absence code "K," which corresponds to "other reasons, including business."

<sup>6</sup> Exhibit 5 at 1.

<sup>7</sup> AS 43.23.005(a). Ms. N asserts that she was and still is an Alaska resident. The division's position statement questions her residency. However, the division's denial was based on Ms. N's absence for more than 180 days, and the residency issue was not fully briefed. Therefore, for purposes of this analysis, it is assumed that Ms. N met the residency requirement, but this decision does not make a determination as to whether Ms. N has maintained her Alaska residency.

<sup>8</sup> AS 43.23.005(a)(6).

When Ms. N applied for the 2015 dividend, the division requested additional information about her absences from the state during 2014, the qualifying year. Ms. N acknowledged that she was absent for more than 180 days, and listed the reason as absence code K. Absence code K is a catch-all corresponding to AS 43.23.008(a)(17):

[A]n 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

(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; . . . <sup>9</sup>

The longest cumulative absence authorized under AS 43.23.008(a)(17) is 180 days, and Ms. N's absence exceeded that limit.<sup>10</sup>

*B. Was Ms. N's absence from the state in 2014 allowable under AS 43.23.008(a)(3)?*

Ms. N argues that she should be eligible for a dividend under AS 43.23.008(a)(3).

That paragraph provides:

[A]n 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

...

(3) . . . accompanying, as that individual's spouse, . . . 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.<sup>11</sup>

In order to qualify for the exception under paragraph (a)(3), the applicant's spouse must not only be serving on active duty in the military, the applicant's spouse must also be eligible for that year's dividend. Ms. N does not argue that her husband has ever been an Alaska resident. Because he was not an Alaska resident in 2014, Mr. N was not eligible for a 2015 permanent fund dividend. Thus, although Ms. N was accompanying her spouse when she was absent from the state in 2014, and her spouse was on active duty, because her spouse was not eligible for a 2015 dividend Ms. N does not meet the criteria for an allowable

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<sup>9</sup> AS 43.23.008(a)(17).

<sup>10</sup> Exhibit 5 at 1; Exhibit 7 at 1 - 2.

<sup>11</sup> AS 43.23.008(a)(3).

absence under AS 43.23.008(a)(3).<sup>12</sup> Meeting two of the three criteria for the allowable absence is not sufficient.

Ms. N acknowledges that she does not qualify under AS 43.23.005(a)(3) because her husband is not a resident.<sup>13</sup> However, she argues that the law should be reviewed and revised.<sup>14</sup> In Ms. N's view, the fact that her husband is not an Alaska resident should not affect her own eligibility for a dividend. She argues strenuously that she was born and raised in Alaska, intends to return to Alaska to stay, and is only absent because the Air Force has stationed her husband elsewhere. Ms. N has provided numerous exhibits documenting her regular visits to Alaska and her ties to the state. However, the issue in this case is not whether Ms. N maintains her Alaska residency; for purposes of this analysis it is assumed that she remains a resident. The issue is whether she met the physical presence requirement for the 2015 dividend, or qualified for an allowable absence. She did not.

Fundamentally, Ms. N is arguing that the exception for spouses accompanying active duty members of the military should be expanded. However, the division does not have authority to expand the list of allowable absences; it must administer the dividend program according to the existing statutes. Based on the current Alaska statutes, the division's decision to deny Ms. N's 2015 dividend application was correct.

#### **IV. 2013 and 2014 Dividends**

Ms. N's request for formal hearing indicated that she was appealing for dividend years 2013, 2014, and 2015. However, the case referral notice noted that "the 2015 application is the only consideration in this matter as the 2013 application does not have present formal appeal rights and there is no 2014 application to consider." Ms. N nonetheless maintains that this hearing should not be limited to the 2015 dividend denial.<sup>15</sup>

Ms. N applied for a 2013 dividend. The division denied the application on December 20, 2013 on the grounds that an absence of more than 180 days to accompany an ineligible spouse is not an allowable absence, and also that maintaining a principal home outside of Alaska makes an individual not eligible for a dividend.<sup>16</sup> Under the regulations governing

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<sup>12</sup> See *In re J.B.*, OAH No. 11-0058-PFD at 2 (Exhibit 13 at 6).

<sup>13</sup> Exhibit 8 at 8 ("The real reason that I am not and have not been receiving the permanent fund dividend these past few years is because my husband is not an Alaska resident.")

<sup>14</sup> Exhibit 8 at 7 - 8.

<sup>15</sup> Letter from N received 12/05/2016 by the division.

<sup>16</sup> Exhibit 9 at 1.

permanent fund dividend appeals, appeals must be filed within 30 days after the notice of disallowance, unless the individual demonstrates reasonable cause for failure to file within this period.<sup>17</sup> Ms. N included dividend year 2013 on her April 2016 request for informal appeal.<sup>18</sup> However, because her 2013 application was denied on December 30, 2013, her 2016 application for informal appeal of the 2013 denial did not meet the 30 day deadline.

Although Ms. N asserted that her eligibility for a 2013 dividend should be addressed in this proceeding, she did not specify reasonable cause for her failure to appeal the 2013 denial within 30 days of the division's decision. Because Ms. N did not request an informal appeal within the 30 day period, and she did not offer reasonable cause for that failure, her 2016 request for informal appeal of the denial of her 2013 dividend application was not timely.

According to the division's records, Ms. N did not apply for a 2014 dividend.<sup>19</sup> Ms. N provided no evidence that those records are incorrect. In order to be eligible for a dividend, a person must apply.<sup>20</sup> Because Ms. N did not apply, she was not eligible for a dividend. Also, because she did not apply, there is no division action relating to a 2014 application to appeal in this case.

Accordingly, the only dividend year at issue in this case is 2015.

## **V. Conclusion**

Ms. N was absent from the state for more than 180 days in 2014. Ms. N's absence is not covered by the allowable absence provision for spouses accompanying a member of the armed forces serving on active duty because her husband was not eligible for a 2015 dividend, and Ms. N has not identified any other statutory provision under which her absence would be allowable. Therefore, Ms. N was not eligible for the 2015 dividend. The division's decision to deny Ms. N's application for a 2015 permanent fund dividend is affirmed.

Dated: February 24, 2017.

*Signed*  
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Kathryn L. Kurtz  
Administrative Law Judge

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<sup>17</sup> 15 AAC 05.010(b)(5).

<sup>18</sup> Exhibit 6.

<sup>19</sup> Exhibit 10.

<sup>20</sup> AS 43.23.005(a)(1).

## 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 24th day of March, 2017.

By: Signed  
Signature  
Kathryn L. Kurtz  
Name  
Administrative Law Judge  
Title

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