

BEFORE THE DEPARTMENT OF REVENUE

STATE OF ALASKA

IN THE MATTER OF)
X D. O) ORDER DENYING
) SUMMARY ADJUDICATION
1994 PERMANENT FUND DIVIDEND)
_____) CASELOAD NO. 950068

X D. O, (Applicant), filed a 1994 Permanent Fund Dividend application. Exhibit 1. The application was denied by the Permanent Fund Dividend Division. Ex. 3. The Applicant appealed, and the denial was affirmed in an informal conference decision issued August 31, 1994. Ex. 4 & 5. The Applicant then appealed the informal conference decision and requested a formal hearing. Ex. 6.

On April 17, 1995, the Permanent Fund Dividend Division filed a Motion for Summary Adjudication alleging that no material facts were in issue and that X D. O was not eligible for a 1994 Permanent Fund Dividend (PFD) as a matter of law. The Division argued that the Applicant is not entitled to a 1994 PFD because he was out of Alaska for over 120 days in addition to an allowable absence as a graduate student during the 1994 qualifying period.¹

The facts relating to the Applicant's absence are not in dispute. The Applicant was enrolled as a full-time student for the winter, spring, and fall quarters of 1993 at No Name State University. The Applicant was not enrolled as a full-time student during the summer of 1993. His absence totaled 137 days, in addition to the periods of time that he was attending classes, during the 1994 eligibility period.

The Applicant does not dispute the fact that he was absent over 120 days in addition to the dates that his registrar shows that he was enrolled as a graduate student during the 1993 qualifying year. He maintains that he should be eligible for a 1994 dividend. The Applicant asserts that he was a full-time student during the summer of 1993 because he was doing required research for his masters degree at that time. The Applicant argues that this work meets either the requirements of 15 AAC 23.163(c)(2) or 15 AAC 23.163(c)(5)

15 AAC 23.163 provides in part:

(c) An individual who otherwise qualifies, but who was not physically present in Alaska for the entire qualifying year, may be eligible for a dividend if the individual was absent primarily for one of the following reasons:...

¹ The 1994 qualifying period was the 1993 calendar year. AS 43.23.005(a).

(2) attending, on a full-time basis, an academic institution, seminar, or other recognized course or program for continuing professional educational development, including sabbatical leave, legal education, and certified public accountant development courses, for which there is no comparable course or program reasonably available in Alaska;

(5) enrollment and attendance in good standing as a full-time student at a college, university, or junior or community college, accredited by the accreditation association for the region in which the college or university is located, for the purpose of pursuing an associate, baccalaureate, or graduate degree;...

(16) any other reason or reasons consistent with the individual's intent to remain a resident provided the absence or cumulative absences do not exceed...

(B) the greater of 120 days, one school semester during which the individual was enrolled, or one school quarter during which the individual was enrolled, in addition to any absence or cumulative absences under (1) or (5) of this subsection if the individual is not claiming any absence under (2) - (4) or (6) - (15) of this subsection;...

The Division is correct in its assertion that the Applicant's summer research for his graduate degree does not meet the requirement of 15 AAC 23.163(c)(2). The Applicant's summer research was undertaken for completion of a graduate program, not for continuing professional educational development, as such it must meet the requirements of 15 AAC 23.163(c)(5).

The Division is also correct in its assertion that research work for a graduate degree does not meet the requirements of 15 AAC 23.163(c)(5) unless the Applicant is enrolled as a full-time student while that research is being conducted. The Alaska Supreme Court has upheld the full-time enrollment requirement in 15 AAC 23.175(c)(2) the predecessor to 15 AAC 23.163(c)(5). See State Dept. of Revenue v. Bradley, Op. No. 4221 (June 9, 1995).

The Division's interpretation of 15 AAC 23.163(c)(5) and (16)(B) as applied in this case however, is incorrect. 15 AAC 23.163(c)(5) and (16)(B) are intended to give full-time students in good standing the opportunity to be away from the state on an allowable absence. These students must return to the state at some time every two years as required by AS 43.23.005(a)(4) in order to maintain their eligibility. Normal enrollment as a full-time student consists of enrollment for the winter, spring, and fall quarters, or the fall and spring semesters. Enrollment and attending classes between quarters or semesters, on holidays, or during the summer is not required in order to maintain full-time student status. 15 AAC 23.163(c)(5) allows absence from the state during the period of time that an individual continues to be enrolled as a full-time student in good standing for regular terms of the school year, i.e. the winter, spring, and fall quarters, or the fall and spring semesters.

A graduate or undergraduate school year generally requires significantly less than 245 days of attendance within a calendar year. If, as the Division asserts, the days between periods of normal attendance are not included within the allowance provided by 15 AAC 23.163(c)(5), Alaska students would be required to return to Alaska every year. Once a student lost eligibility by failing to return it would take a substantial interruption of out-of-state education in order to re-establish Alaska residency. As a practical matter Alaska students would have to spend all their summers in Alaska, and could not maintain their eligibility if they participated in out-of-state non-credited summer internships, summer trips, or study abroad programs. Fortunately, 15 AAC 23.163(c)(5) and (16)(B) do not require this sacrifice, nor was such a result likely intended by the Legislature.

In fact, the purpose of 15 AAC 23.163(c)(16)(B) is to allow students to spend one quarter or semester a year in part-time status, or on probation. The inclusion of the words "one school semester during which the individual was enrolled, or one school quarter during which the individual was enrolled" demonstrate this intent. This provision is ineffective under the interpretation that the Division asserts, because it is impossible to be enrolled out-of-state for a semester or a quarter, and not be absent for more than the actual days of required attendance. The Division's interpretation of 15 AAC 23.163(c)(16)(B) would make this language superfluous, since 120 days will always be greater than a semester or a quarter.

15 AAC 23.163(c)(5) covers periods between regular terms. A full-time student can for example, spend spring semester as a part-time or probationary student and remain absent during the summer so long as full-time enrollment in good standing resumes in the fall. This is the only interpretation of 15 AAC 23.163(c)(5) that gives coherency to 15 AAC 23.163(c)(16)(B) and effect to the apparent intent of 15 AAC 23.163(c)(16)(B). When full-time enrollment in good standing does not follow a regular term of part-time or probationary enrollment, or when a student is not enrolled during the next regular term, 15 AAC 23.163(c)(16)(B) requires that the student's absence not exceed 120 days, excepting the days of full-time enrollment in good standing, which includes the days between regular terms.

The Division does not dispute the fact that the Applicant was enrolled full-time, in good standing, except for about 18 days, excluding regular term breaks. The Division has not shown that it is entitled to summary judgment as a matter of law. The Division has not demonstrated that the Applicant should be denied a 1994 PFD for failure to comply with 15 AAC 23.163(c)(2)&(16)(B).

Therefore, the Division's Motion for Summary Adjudication is DENIED. This case is REMANDED to the Permanent Fund Dividend Division to reconsider X D. O's eligibility for a 1994 PFD.

DATED: September 7, 1995

Signed _____
Mark T. Handley
Revenue Hearing Examiner

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