

BEFORE THE DEPARTMENT OF REVENUE

STATE OF ALASKA

IN THE MATTER OF )  
X D. O ) SUPPLEMENTAL ORDER  
)  
1994 PERMANENT FUND DIVIDEND ) CASELOAD NO. 950068  
\_\_\_\_\_ )

On September 27, 1995, the Permanent Fund Dividend Division filed a Motion for Reconsideration of In the Matter of X D. O, Order Denying Summary Adjudication issued September 7, 1995. A motion for reconsideration may be filed only when a final order is issued. See 15 AAC 05.035. The Order Denying Summary Adjudication, finding that Mr. O had not violated 15 AAC 23.163(c)(5) & (16), remanded the case to the Division. It was not a final order. The Division's motion cannot therefore be accepted as a motion for reconsideration.

The motion was accepted, however, as a motion to reopen the record. In its motion, the Division maintains that the order was in error. The Applicant filed an opposition to the Division's motion on October 4, 1995. The Applicant asserts that the Division's Motion for Summary Adjudication was properly denied. The Division responded to the Applicant's opposition on October 10, 1995.

The Applicant's 1994 PFD was denied because he was out of Alaska for over 120 days in addition to being out of Alaska on an allowable absence as a full-time student. 15 AAC 23.163(c) provides in pertinent part:

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: . . .

- (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 . . .

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 Division asserts that the hearing officer's determination that 15 AAC 23.163(c)(5) allowed the Applicant to be absent from the state between his periods of attendance during the winter, spring, and fall quarters of 1993 is incorrect. The Division argues that 15 AAC 23.163(c)(5) does not allow Alaskans to be absent from the state during the periods between two consecutive regular school terms in which they are enrolled as full-time students. The Division argues that the Applicant's absences from the state between winter, spring, and fall quarters of 1993 were not allowed under 15 AAC 23.163(c)(5), and that because these periods between regular terms exceeded 120 days, the Applicant's absence was also not allowable under 15 AAC 23.163(c)(16)(B).

The Applicant suggests that the Division's position reflects a misunderstanding of the nature of the requirements of graduate studies. The Applicant asserts that as a graduate student in science, he was required to attend to studies and research throughout the entire year, and that the breaks between terms were administrative designations rather than periods of time during which he was free from academic commitments. The Applicant asserts that his absence from the state during these periods was due to the requirements of his master's degree program, and was not a matter of choice.

An Alaskan such as the Applicant, who is absent from the state as a full-time student in good standing during two consecutive regular school terms, is absent primarily for the purpose of enrollment and attendance as a full-time student. A regulation should mean what its language would reasonably convey to others. See North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978). The language of 15 AAC 23.163(c)(5) gives Alaskans who are outside the state primarily for the purpose of being enrolled as full-time students the opportunity to be away from the state on an allowable absence. Nothing in the regulation implies that these students are required to be physically present in Alaska between normal periods of attendance, such as regular term breaks, holidays and weekends. It is not reasonable to draw the inference that the Applicant's failure to be present in Alaska between two consecutive periods of normal attendance, such as the week between the winter and spring quarters of 1993, was for a purpose other than attendance as a full-time student at No Name State University.

The Division takes specific exception to the finding that 15 AAC 23.163(c)(5) allows Alaskans to be absent between periods of full-time enrollment during spring and fall terms. In its motion the Division states:

The Division has a long standing practice of considering all school terms within a year, including summer term(s), to be those that are applicable to which the Applicant should be attending as a full-time student when absent from Alaska.

Division's Motion, page 4.

The Division's expectations for students seem to exceed those held by the majority of American universities and colleges. The graduate program in which the Applicant was enrolled specifically provides that attendance during summer quarter is not required of degree candidates. See Ex. C. The average full-time undergraduate or graduate student does not take a full-time credit load during the summer months. Some colleges do not provide students with the opportunity to take a full course load in their subject area, and some programs, like the Applicant's, require the student to pursue uncredited research during the summer months. See Ex. E. Law students traditionally work in uncredited clerkships during the summer months. The tradition that summer attendance is generally not expected is based in part on a practical consideration that many students need to earn money in order to defray the costs of their education, and the summer months provide the most opportunities for temporary employment.

The definition of a full-time student pursuing a degree suggested by the Division encompasses only the exceptional members of that class. The language of the regulation provides an allowable absence for those full-time students who follow the normal path to obtain a degree. The words "enrollment and attendance as a full-time student" convey to the reader the idea of a student enrolled and attending all the regular terms of the school years; i.e., the spring, fall and winter quarters, or the fall and spring semesters.

The Division argues that periods between regular terms are covered by 15 AAC 23.163(c)(16)(B) rather than 15 AAC 23.163(c)(5). The Division states that:

[15 AAC 23.163(c)(16)(B)] is clear in its reading: an individual may be absent from Alaska for the greater of 120 days OR one school semester or quarter in which the individual is enrolled. The effect is to allow an Applicant to have *either* one part time semester or quarter during a year without losing eligibility for a dividend *or* to spend 120 days outside Alaska not attending school.

Division's Motion, page 5.

Under the Division's interpretation, a student who is enrolled part-time for one quarter will lose eligibility unless the student obtains instantaneous transport to and from Alaska for the remaining term breaks in the year. Moreover, a student who did not exercise the foresight to be present in Alaska during term breaks that preceded a part-time quarter might not be eligible. The practical impossibility of complying with the regulation under the Division's interpretation suggests that it is not the correct one. See Sherman v. Holiday Construction Co., 435 P.2d 16, 19 (Alaska 1963).

The net effect that results from not including term breaks in the allowance provided by 15 AAC 23.163(c)(5) is to penalize students enrolled part-time for one term. It would require all students to attend summer-term as full-time students or return to Alaska for at least a few weeks

every year. If that is the intent of these regulations it is not clearly articulated. The Division's interpretation would require students who do not attend the summer term as full time students to return to Alaska every year. Other Alaskans who are out of the state on allowable absences are required to return only every two years in order to maintain their eligibility. AS 43.23.005(a)(4).

An ambiguity should be construed in the most beneficial way that the language will permit to avoid hardship, forfeiture or injustice. See *City of Anchorage v. Thomas*, 624 P.2d 271 (Alaska, 1981). Reading 15 AAC 23.163(c)(5) to cover periods between regular terms resolves the ambiguity in the Division's interpretation of 15 AAC 23.163(c)(16)(B) and gives effect to the provision for an allowable absence for "one school semester during which the individual was enrolled, or one school quarter during which the individual was enrolled" in addition to an absence as a full-time student.

15 AAC 23.163(c)(16)(B) applies to periods between terms only when a student does not attend school as a full-time student in good standing during the next regular term. 15 AAC 23.163(c)(16)(B) allows a full-time student to spend one term as a part-time or probationary student and remain absent so long as full-time enrollment in good standing resumes the following term. 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. This interpretation of 15 AAC 23.163(c)(5) and 15 AAC 23.163(c)(16)(B) reflects what the language conveys, and provides a workable rule that satisfies the objectives of the PFD statutes, while avoiding the practical hardships caused by the Division's interpretation.

The primary purpose of the 120-day limit in 15 AAC 23.163(c)(16)(B) is to disqualify students who are absent from Alaska before and after a period of full-time enrollment during consecutive normal school terms for a total of more than 120 days. A student may not remain absent doing uncredited research for more than 120 days after his last day of enrollment as a full-time student and maintain eligibility. If for example, the Applicant had decided to continue his uncredited required research during the fall quarter of 1993 he would have lost eligibility for a 1994 PFD if he had failed to return to Alaska for the remainder of the dividend year. Since the Applicant was a full-time student during the fall quarter, however, his absence during the summer was allowable under 15 AAC 23.163(c)(5).

The order issued September 7, 1995 stands as issued. The case remains on remand and the Division is ordered to determine if the Applicant is otherwise eligible for a 1994 Permanent Fund Dividend.

DATED: March 27, 1996

*Signed* \_\_\_\_\_  
Mark T. Handley  
Revenue Hearing Examiner

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