

BEFORE THE DEPARTMENT OF REVENUE

STATE OF ALASKA

IN THE MATTER OF)
T D. C) ORDER DENYING
) SUMMARY ADJUDICATION
1993 PERMANENT FUND DIVIDEND)
_____) CASELOAD NO. 950128

T D. C, (Applicant), filed a 1993 Permanent Fund Dividend application. Exhibit 1. The application was denied by the Permanent Fund Dividend Division. Ex. 2. The Applicant appealed, and the denial was affirmed in an informal conference decision issued December 30, 1994. Ex. 5 & 6. The Applicant then appealed the informal conference decision and requested a formal hearing. Ex. 6.

On April 24, 1995, the Permanent Fund Dividend Division filed a Motion for Summary Adjudication alleging that no material facts were in issue and that T D. C was not eligible for a 1993 Permanent Fund Dividend (PFD) as a matter of law. The Division argued that the Applicant is not entitled to a 1993 PFD because he was out of Alaska for over 120 days in addition to an allowable absence as an undergraduate student during the 1993 qualifying period.¹

The facts relating to the Applicant's absence are not in dispute. The Applicant was enrolled as a part-time student for the spring semester, and a full-time student for the fall semester of 1992 at No Name University, paying out-of-state tuition. The Applicant was not enrolled as a full-time student during the summer of 1992. He left the state on January 5, 1992 and returned on December 21, 1992.

The Applicant does not dispute the fact that he was absent over 120 days in addition to the dates that he was enrolled as a full-time student during the 1993 qualifying year. He maintains that he should be eligible for a 1993 dividend. The Applicant asserts that he transferred to No Name University from the from the University of No Name 2 at No Name 3 with the intention of enrolling as a full-time student, but after he arrived he realized that he would need to get more financial assistance before he could afford to enroll full-time. He therefore enrolled part-time for his first semester. The Applicant asserts that because he was denied his 1992 PFD due to his part-time status for the spring of 1992 it is unfair to also deny his 1993 PFD for the same reason.

15 AAC 23.163 provides in part:

(c) An individual who otherwise qualifies, but who was not physically

¹ The 1993 qualifying period was the 1992 calendar year. AS 43.23.005(a).

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 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 part-time enrollment in the spring of 1992 does not meet the requirement of 15 AAC 23.163(c)(5). 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, 896 P. 2d 237 (Alaska 1995).

The Division's interpretation of 15 AAC 23.163(c)(5) and (16)(B) as applied in this case, however, is incorrect. 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. An enrolled student can spend spring semester out of the state as a part-time or probationary student and remain absent during the summer so long as full-time enrollment in good standing begins 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. All the days that the applicant was absent from the state, but not enrolled as a full-time student during the

qualifying period would then count toward the 120 day limit, but the days between a term of part-time or probationary enrollment and the next regular term do not count if during that next regular term the applicant is enrolled full-time in good standing. The days between two consecutive regular terms of full-time enrollment also do not count against the 120 day limit.

The Division does not dispute the fact that the Applicant was enrolled full-time, except for one semester of part-time enrollment and periods of time that fall between regular term breaks during the 1993 qualifying period. 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 1993 PFD for failure to comply with 15 AAC 23.163(c)(5)&(16)(B).

Therefore, the Division's Motion for Summary Adjudication is DENIED. This case is REMANDED to the Permanent Fund Dividend Division to reconsider T D. C's eligibility for a 1993 PFD.

DATED: September 20, 1995

Signed

Mark T. Handley
Revenue Hearing Examiner

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