

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

In the Matter of)	
)	
K C AND D T, Y C & Z C (MINORS))	OAH No. 18-0190-PFD
)	Agency Nos. 2017-035-1439,
)	2017-033-2606/2732/
_____)	0832

DECISION AND ORDER

I. Introduction

K C applied for a 2017 Permanent Fund Dividend (“PFD”) and applied as the sponsor for her three minor children. The Permanent Fund Dividend Division (“the Division”) denied her application initially and at the informal appeal level on the grounds that she was absent from the state for over 180 days during 2016 – the qualifying year for the 2017 PFD – and that she was absent for over 45 days in addition to her allowable absence to take care of a terminally ill family member. Ms. C requested a formal hearing to address her claim that her absences to take care of the estate of her grandmother should qualify as an allowable absence since her need to deal with this matter was necessitated by her mother’s incapacity.

A hearing was held on April 4, 2018. Ms. C appeared in person. Peter Scott appeared by telephone and represented the Division. After the hearing, supplemental briefing was ordered to address the issue of whether Ms. C could qualify for the allowable absence under AS 43.23.008(a)(8) for settling the estate of a parent under the facts of this case. Because AS 43.23.008(a)(8) does not provide for an allowable absence to settle the estate of a grandparent, Ms. C was absent for over 45 days in addition to her allowable absences. Therefore, Ms. C is not eligible for the 2017 PFD and, because she is the sole sponsor for her minor children, they are also not eligible for the 2017 PFD. The Division’s decision is affirmed.

II. Facts

There are no disputes about the facts in this matter; the only issue is the application of AS 43.23.008(a)(8) to Ms. C’ circumstances.

Ms. C is a long-time Alaska resident who filed for and received PFDs from 1989 through 2016.¹ Unfortunately, in 2016 – the qualifying year for the 2017 PFD – Ms. C was forced to be out of the state to care for her terminally ill grandmother, and then, when she passed away, to deal with her grandmother’s estate.² Ms. C filed for her 2017 PFD online, reporting 231 days of absences: all of which, except for four days, were related to the care of her grandmother and then dealing with her grandmother’s estate when she passed away.³

The Division denied Ms. C’ application initially on the grounds that she was absent from the state for over 45 days in addition to the allowable absences for taking care of her grandmother. Ms. C requested an informal appeal, noting that she is, and has always been, an Alaska resident, but had to be out of state due to her grandmother’s circumstances.⁴ At the informal appeal, the Division affirmed its initial denial, noting that AS 43.23.008(a)(8) provides an allowable absence for settling the estate of a family member, but only for a “deceased parent, spouse, sibling, child or stepchild,” and not a grandparent.⁵

Ms. C requested a formal hearing and testified as to her family circumstances. At the hearing, Ms. C testified that her mother was not capable of dealing with her grandmother’s issues, due to physical and mental health issues. For this reason, Ms. C obtained a power of attorney to deal first with her grandmother’s terminal illness and then, on her passing, with issues relating to settling her grandmother’s estate.⁶ There was no dispute between the parties concerning Ms. C’ need to be out of state, or the incapacity of her mother, and Ms. C’ need to step into her mothers’ shoes to deal with her grandmother’s estate.

Based on Ms. C’ testimony, supplemental briefing was ordered to address the issue:

[W]here the applicant has a power of attorney, necessitated by the incapacity of her parent, for the purpose of settling the estate of a grandparent, does she step into the role of her mother in a manner that would qualify her as legally equivalent to the child settling the estate of a parent for purposes of §008(a)(8)?

The Division provided supplemental briefing reaffirming its previous position. The Division acknowledged Ms. C’ difficult circumstances, but noted that AS 43.23.008(a)(8) is

¹ Exhibit 1 p. 5.
² Exhibit 1 pp. 3-4
³ *Id.*
⁴ Exhibit 7 p. 2.
⁵ Exhibit 8 pp. 1-4.
⁶ Testimony of Ms. C.

clear on its face and simply does not provide an allowable absence to take care of a grandparent's estate.⁷

III. Discussion

The applicant bears the burden of proving that the Division wrongly denied a PFD.⁸ To qualify for a PFD, an Alaska resident must be physically present in Alaska for 180 days during the qualifying year, unless the absence is for one of the "allowable absences" listed in AS 43.23.008.⁹ A person may be out of Alaska for more than 180 days and still be a resident, but, unless the absence is allowed, the person is not eligible for a PFD. For a child to be eligible for a PFD, the adult who filed for the child must be eligible.¹⁰

Here, there is no dispute that Ms. C' time out of state to take care of her terminally ill grandmother is an allowable absence under AS 43.23.008(a)(7) which provides for an allowable absence when an individual is, "providing care for the individual's terminally ill family member." However, AS 43.23.008(a)(8), the section that addresses absences for settling an estate of a family member, uses more limiting language. It limits the allowable absence in such circumstances to an individual who is absent: "settling the estate of the individual's deceased parent, spouse, sibling, child, or stepchild, provided the absence does not exceed 220 days."

Ms. C does not dispute the wording of the statute, or the Division's calculations. Indeed, Ms. C provided all the information required by the Division openly and honestly. Her argument is that the difference between subsections (a)(7) and (a)(8) appear unfair in her circumstances where she was the only person who could deal with her grandparent's estate. Unfortunately, the law here is clear, specific and limited.¹¹ It does not include grandparents, and it does not provide for an exception for a grandchild even where she has been granted a power of attorney by her mother.¹²

⁷ Division's Formal Hearing Supp. Br. Statement.

⁸ 15 AAC 23.113(b)(1)

⁹ See 43.23.005(a)(6).

¹⁰ 15 AAC 23.113(b)(1) and (c).

¹¹ In interpreting a statute, courts will infer that the legislature intended to exclude items omitted from a clearly designated list of items in the statute. *Croft v. Pan Alaska Trucking, Inc.* 820 P.2d 1064, 1066 (Alaska 1991).

¹² The analysis in the Division's supplemental briefing is well taken. There are many different types of powers of attorney and many circumstances in which an individual might grant another a power of attorney to deal with a matter. Absent statutory authority, the fact of a power of attorney does not change the clear wording of the law.

AS 43.23.008(a)(17)(C) provides that individuals who are absent from the state for 45 days in addition to the cumulative allowable absences are ineligible for the PFD.¹³ Ms. C was absent from the state for more than 45 days in addition to her allowable absence for taking care of her terminally ill grandmother. Although the application of this 45-day rule may seem unfair in this case, the law simply does not permit an exception of this hard and fast rule for Ms. C's circumstances.¹⁴

IV. Conclusion

Because Ms. C's absence to deal with her grandmother's estate does not qualify as an allowable absence under the clear wording of the law, the Division was correct in finding that she was absent for more than 45 days in addition to her allowable absence to care for her grandmother. The Division's denial of her 2017 PFD is affirmed. Because the minor children do not have an eligible sponsor, the denial of the minor children's PFD applications is also affirmed.

Dated: April 23, 2018

Signed

Karen L. Loeffler
Administrative Law Judge

¹³ The statute provides:

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

¹⁴ See e.g., *In re: K.Q.*, OAH No. 16-0592-PFD (2016)(denying PFD for individual absent to take care of uncle's estate under 45-day rule). Exhibit 11.

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 7th day of June, 2018.

By: Signed
Signature
Sheldon Fisher
Name
Commissioner, Dept. of Revenue
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]