

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

In the Matter of)	
)	
K E)	OAH No. 19-0200-PFD
)	Agency No. 2018-007-1990
_____)	

DECISION

I. Introduction

K E applied for the 2018 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division denied his application. Mr. E appeals that decision.

As explained below, a preponderance of the evidence shows that Mr. E was absent from Alaska for more than 120 days in addition to his allowable absence for an educational purpose. Thus, even though he is a longtime resident of Alaska, he was not eligible for the 2018 PFD. Accordingly, the decision to deny Mr. E’s 2018 PFD application is **AFFIRMED**.

II. Facts

The material facts are undisputed. Mr. E is a long time Alaska resident, who has applied for and received permanent fund dividends since 1998 until 2017, the first year his application was denied.¹

Mr. E submitted an online application for the 2018 PFD.² On his application, Mr. E disclosed that he had been absent from Alaska for post-secondary school for 321 days during calendar year 2017.³ Mr. E submitted an incomplete Education Verification form, and thus, the Division could not determine the number of days he was enrolled as a student at N S College during 2017, the qualifying year for the 2018 PFD.⁴ The Division asked Mr. E to submit a current Education Verification form.⁵

¹ Ex. 1 at 4. Although Mr. E lists his 2017 PFD on his Request for Formal Hearing, he did not appeal the denial of his 2017 PFD within 30 days of the denial, and that decision was never decided through the division’s informal appeal process. Thus, any appeal for that denial is untimely. *See* 15 AAC 05.010(b)(5) (requiring appeal to be filed with the PFD division within 30 days after the date of notice of denial).

² Ex. 1 at 5.

³ Ex. 1 at 3.

⁴ Ex. 5 at 2; Ex. 7 at 1.

⁵ Ex. 7 at 1.

Mr. E did not submit the requested form, and on August 24, 2018, the Division denied his application.⁶ The Division reasoned that Mr. E failed to provide sufficient documentation showing he met all the eligibility requirements.⁷

Mr. E filed a timely Request for Informal Appeal.⁸ He explained that he neglected to submit the proper documentation because he forgot to change the email associated with his account.⁹ Mr. E attached a Concise Student Schedule and an Enrollment Verification Certificate from the University of Alaska at Anchorage to his informal appeal, but he did not provide the Education Verification form from N S College as the Division requested.¹⁰

On January 9, 2019, the Division sent Mr. E an email advising him that absences for educational purposes require full-time enrollment to be allowable for PFD purposes, and that he could not be absent for more than 120 days in addition to the dates he was enrolled in college full-time.¹¹ The Division gave Mr. E the opportunity to provide documentation to verify additional dates of full-time enrollment or documentation of completed travel, such as boarding passes or airline mileage plan statements, to show additional dates he was physically present in Alaska.¹²

Mr. E did not provide additional documentation, and on February 14, 2019, the Division upheld the denial.¹³ The Division reasoned that Mr. E failed to provide requested information within 30 days of the Division's request; he failed to prove that his absence from Alaska during 2017 was allowable under the PFD statutes and regulations; and he failed to prove that he met the definition of a "state resident" as it applies to the PFD program.¹⁴ The Division explained:

[B]ased off the absence dates you provided and the documentation we have received from N S College, you were absent from Alaska for 228 days attending part-time school and only 74 days for full-time school. In order for an individual's absence for post-secondary education to be allowable, one of the

6 Ex. 3.
7 Ex. 3.
8 Ex. 4.
9 Ex. 4 at 2.
10 Ex. 4 at 3-4.
11 Ex. 7 at 5.
12 Ex. 7 at 5.
13 Ex. 6.
14 Ex. 6 at 1.

requirements is that you cannot be absent more than 120 days in addition to the dates attending full-time school.¹⁵

On February 20, 2019, Mr. E filed a Request for Formal Hearing.¹⁶ Mr. E claimed: he did not receive emails requesting additional information; he has provided information showing his enrollment in college; and he was confused about what additional information was needed.¹⁷ Mr. E argued that he drove to Washington for school, and the education verification form will not account for travel time and getting situated in the location.¹⁸ He also argued that he never claimed residency in another state, and he continues to receive benefits as an Alaska resident, such as state medical care and insurance and Alaska supplemental loans for education purposes.¹⁹

Mr. E provided additional documentation, specifically: a Working Out of State Questionnaire and tax returns;²⁰ and an official transcript from N S College.²¹ According to the documentation, Mr. E was absent from Alaska for 319 days in 2017. He was enrolled at N S College full time for 75 days from April 3, 2017 through June 6, 2017 and part-time for 54 days from June 26, 2017 through August 8, 2017.²² In addition to the 129 days of school, Mr. E was absent from Alaska for 190 days: from January 1, 2017 through January 17, 2017;²³ January 20, 2017 through April 2, 2017;²⁴ June 17, 2017 through June 25, 2017;²⁵ and August 19, 2017 through November 17, 2017.²⁶

The Office of Administrative Hearings (OAH) held a telephonic hearing on April 15, 2019. Mr. E represented himself and testified on his own behalf. Mr. E does not dispute his absences from Alaska.²⁷ PFD Specialist Peter Scott represented the Division. Based on the information Mr. E provided through the informal conference and formal appeal process, the

¹⁵ Ex. 6 at 3.

¹⁶ Ex. 8.

¹⁷ Ex. 8 at 2.

¹⁸ Ex. 8 at 2.

¹⁹ Ex. 8 at 2.

²⁰ Ex. 9.

²¹ Ex. 10.

²² Ex. 5 at 2; Ex. 10 at 1.

²³ Ex. 2 at 3; Ex. 1 at 3.

²⁴ Ex. 1 at 3.

²⁵ Ex. 1 at 3.

²⁶ Ex. 2 at 2.

²⁷ K E Testimony.

Division conceded that Mr. E remained an Alaska resident at all times during the 2018 qualifying year.²⁸ All exhibits were admitted without objection.

III. Discussion

Mr. E has the burden of proving by a preponderance of the evidence that he meets the eligibility requirements for a PFD.²⁹ To qualify for a PFD, the applicant must be an Alaska resident and have either been physically present in Alaska throughout the qualifying year or have been absent only for one of the allowable reasons listed in AS 43.23.008.³⁰ The qualifying year for the 2018 dividend was 2017.³¹

The Division agrees that Mr. E maintained his Alaska residency during his absence. Nevertheless, PFD eligibility requires not only Alaska residency, but also physical presence in Alaska or an allowable excuse for an absence during the qualifying year. There is no dispute that Mr. E was absent from Alaska for 319 days in 2017, and the parties do not dispute the facts regarding that absence. Thus, the question in this case is whether, despite his residency status, Mr. E was absent from Alaska for too long of a period to be eligible for a 2018 PFD.

The Alaska legislature has identified seventeen reasons that a person may be absent from Alaska and still qualify for a dividend the next year.³² Because the parties agree that Mr. E's 75-day absence from the state from April 3, 2017 through June 16, 2017 was allowable under AS 43.23.008(a)(1), the dispute arises from the 244 days, in addition to the 75 days he was enrolled as a full-time student, Mr. E was absent from Alaska. Mr. E must prove that it is more probable than not that the additional 244 days he was absent were allowable under 43.23.008.³³

Based on the evidence presented, the only other absence that Mr. E could qualify for is the catch-all provision that allows absences for any reason consistent with Alaska residency.³⁴ This catch-all provision may be combined with the other sixteen specifically identified allowable absences.³⁵ The number of days allowed for other absences included in the catch-all provision

²⁸ Peter Scott Testimony.

²⁹ 15 AAC 05.030(h).

³⁰ AS 43.23.005(a)(6).

³¹ AS 43.23.095(6).

³² AS 43.23.008(a).

³³ Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5th Ed. 1979).

³⁴ AS 43.23.008(a)(17).

³⁵ AS 43.23.008(a)(17).

varies from 180 days to 45 days, depending on which of the other sixteen allowable absences it is combined.³⁶ Under the PFD statutes, a person could be absent from the state on vacation or other catch-all absence for 180 days, and the entire absence would be allowable.³⁷ A person could also be absent from the state for 365 days for full-time enrollment in post-secondary education, and the absence would be allowable.³⁸ And when a person claims an allowable absence for post-secondary education, he or she can be absent from Alaska for up to 120 days in addition to the days of his or her full-time enrollment at college.³⁹ But a person who is out of state for 75 days for allowable educational purposes, and then absent for more than 120 days in addition to those 75 days (for any other reason not specifically identified as an allowable absence under the PFD statutes), would not be eligible.⁴⁰

In this case, Mr. E's combined absences of 319 days exceeded 180 days. He also spent more than 120 days outside of Alaska in addition to absences allowed for educational reasons. Mr. E asserts that the only reason he lived in Washington was to attend school, but due to financial hardship and the need to support himself, he was unable to attend school full-time throughout the year.⁴¹ He argues that denying him a PFD under these circumstances is a harsh result.⁴²

Although Mr. E's sole purpose for being absent from Alaska was to attend school, and he was unable to attend school full-time due to his unfortunate financial circumstances, the PFD eligibility requirements are strict. As with all line drawing, the precise point where the line is drawn may seem arbitrary, harsh, or unfair. There will undoubtedly be cases like this one that are sympathetic. Unfortunately, the law does not allow the Division or an administrative law judge to consider extenuating circumstances on a case-by-case basis.⁴³ Instead, Mr. E's absences must fit into one of the allowable categories the Legislature has provided.

Because he spent 319 days outside Alaska in 2017, and only 75 of those days were allowable for an educational purpose, there is no legal basis to grant Mr. E a 2018 dividend.

³⁶ AS 43.23.008(a)(17)(A)-(C).

³⁷ AS 43.23.008(a)(17)(A).

³⁸ AS 43.23.008(a)(1).

³⁹ AS 43.23.008(a)(17)(B).

⁴⁰ AS 43.23.008(a)(17)(B).

⁴¹ E Testimony.

⁴² E Testimony.

⁴³ *In re S.H.*, OAH No. 08-0113-PFD (Commissioner of Revenue 2008), at 4.

IV. Conclusion

A preponderance of the evidence shows that Mr. E was absent from Alaska for more than 120 days in addition to his verified allowable educational absence. Accordingly, he is not eligible for the 2018 PFD. The decision to deny K E’s 2018 PFD application is AFFIRMED.

Dated: April 18, 2019

Signed _____
Jessica Leeah
Administrative Law Judge

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 21st day of May, 2019.

By: *Signed* _____
Signature
Jessica L. Leeah _____
Name
Administrative Law Judge _____
Title

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