

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

In the Matter of)

X J)

) OAH No. 19-0650-PFD

) Agency No. 2018-049-4996

DECISION

I. Introduction

X J’s application for a 2018 Permanent Fund Dividend (PFD) was denied because he spent more than 120 days outside of Alaska during 2017, the qualifying year for purposes of the 2018 PFD, in addition to the time he attended college full time in 2017. That denial is upheld because Mr. J’s extended absence from Alaska during 2017 was not for the reasons deemed “allowable” under the statutes governing the PFD program.

II. Facts

X J is a lifelong Alaskan who received a PFD continuously from 1994, in his infancy, through 2016.¹

On March 19, 2019, Mr. J submitted an online application for a 2018 PFD. He was not in Alaska at the time and answered yes to the question that asked if he had been absent from Alaska for more than 180 days during 2017.² In a supplemental section of the application, he identified two absences. The first was from January 15, 2017 through June 20, 2017. It was to finish his college education. The second began on July 30, 2017 and was to participate in “a post-graduation volunteer program [sponsoring] my extended service abroad in Rome, Italy.”³ In subsequent correspondence, Mr. J clarified that he graduated from college on May 12, 2017.⁴ He returned to Alaska on June 20, 2017. He left Alaska on July 30, 2017 to participate in the Volunteer Corps, where he was placed at the College A in Rome, Italy. While he was at the College A, Mr. J attended classes part time from September 28, 2017 through December 25, 2017. He did not return to Alaska until 2018.⁵

¹ Ex. 14.
² Ex. 1, p. 1.
³ Ex. 1, p. 3.
⁴ Ex. 3.
⁵ Ex. 9, pp. 2 – 6.

The Alaska Commission on Postsecondary Education (ACPE) has determined that “the Volunteer Corps is not eligible to participate in the financial aid programs [it] administer[s].”⁶

The Division denied Mr. J’s PFD application because he was absent from Alaska for more than 120 days, in addition to the time he was absent for his college education, in 2017. Specifically, the Division determined that Mr. J was absent from Alaska for a total of 310 days in 2017, of which 117 were to attend college, and the remainder of 193 days was for “other reasons,” which exceeded the allowable time limit of 120 days.⁷ Mr. J timely requested an informal appeal, and, after his informal appeal was denied, timely requested a formal appeal.⁸

III. Discussion

The qualifying year for the 2018 dividend was 2017. In order to qualify for the 2018 PFD, Mr. J had to have been physically present in Alaska all through the qualifying year, or absent for one of the allowable reasons listed in AS 43.23.008(a). “Regardless of whether the absences were for good reasons, unless the absences fall within one of the . . . categories listed in AS 43.23.008(a) as those categories have been defined by regulation,” Mr. J is not eligible to receive a dividend for 2018.⁹

As noted above, Mr. J was attending college full time until May 12, 2017. An absence to attend college full time is an allowable absence for PFD eligibility purposes.¹⁰ The PFD statutes also allows an applicant to be outside of Alaska for 120 days during the qualifying year, in addition to the time spent attending college full time.¹¹ After graduation, Mr. J did not return to Alaska for another 39 days. He left Alaska again on July 30, 2017, and his absence for the rest of the year comes to another 154 days. This yields a total of 193 days that he was absent from Alaska in 2017 when he was not attending college full time. On its face, Mr. J exceeded the amount of time he could be absent from Alaska in 2017 and still receive the 2018 PFD.

⁶ Ex. 12.

⁷ Ex. 6.

⁸ Exs. 7, 10, 11.

⁹ *In re: J. and D.B.*, OAH No. 05-0282 (Commissioner of Revenue 2006), p. 2.

¹⁰ AS 43.23.008(a)(1).

¹¹ AS 43.23.008(a)(17)(B).

Mr. J made two arguments that his time spent in the Volunteer Corps and College A was an allowable absence. His first argument was that he fell within the allowable absence category set forth in AS 43.23.008(a)(2). This section allows an individual to retain PFD eligibility despite an absence if the individual was:

Receiving vocational, professional, or other specific education on a full-time basis, for which, as determined by the Alaska Commission on Postsecondary Education [ACPE], a comparable program is not reasonably available in the state.¹²

The Department’s regulations further define this category as follows:

(c) For the purposes of AS 43.23.008(a)(2)

* * *

(2) receiving vocational, professional, or other specific education on a full-time basis means attending a program for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state; the out-of-state program must be at an educational institution eligible to participate in financial aid programs administered by the Alaska Commission on Postsecondary Education.¹³

Mr. J does not satisfy the requirements for this allowable absence category for two reasons. First, the ACPE has determined that the Volunteer Corp is not “eligible to participate in [the] financial aid programs” it administers. Second, to the extent he was enrolled in classes at the College A, that enrollment was only on a part time basis.

Mr. J’s second argument was that he fell within the allowable absence category set forth in AS 43.23.008(a)(16), which is for individuals who are “participating for education purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State.”¹⁴ Mr. J acknowledged that his participation in the Benedictine Volunteer Corps was not a “student fellowship” directly sponsored by the United States government. However, he argued that because he had a U.S. passport and a visa to go to Italy for his participation in the Volunteer Corps, his participation was indirectly sponsored by the United States government. Utilizing his logic, any trip outside of the United States by a United States citizen is indirectly sponsored by the United States government. This argument is unsustainable. Under the terms of the statute, this allowable

¹² AS 43.23.008 (a)(2).

¹³ 15 AAC.23.163(c).

¹⁴ AS 42.23.008(a)(16).

absence category is limited to those student fellowships explicitly under the sponsorship of the United States Departments of Education or State.

This means that Mr. J was absent from Alaska for 193 days in 2017, in addition to the time he was attending college full time during that calendar year. Although that time was spent with the Volunteer Corps and also involved some part time coursework at the College A, those activities do not count as allowable absences as defined by the PFD statutes and regulations. Because the PFD statutes only allow a general-purpose absence of 120 days, in addition to time accounted for under the special allowance for attending college full time, Mr. J was absent from Alaska for 73 more days than allowed during the qualifying year for the 2018 PFD. As a result, he is not eligible for the 2018 PFD.

IV. Conclusion

Because Mr. J's extended absences from Alaska during 2017 of 193 days, in addition to the allowed absence for him to attend college full time, do not fall within any of the enumerated allowable absences under the PFD statute, he is not eligible for the 2018 PFD. The Permanent Fund Dividend Division's decision to deny Mr. J's application for a 2018 PFD is therefore **AFFIRMED**.

Dated: September 17, 2019.

Signed _____
Lawrence A. Pederson
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 11th day of October, 2019.

By: *Signed* _____
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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