

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

In the Matter of	)	
	)	
T. & S. C.	)	OAH No. 23-0766-PFD
_____	)	

**DECISION**

**I. INTRODUCTION**

The Permanent Fund Dividend Division (“Division”) denied 2023 Permanent Fund Dividends (“PFDs”) for T. and S. C. because they were absent from the state more days than allowed by statute. Part of that absence was spent caring for Mr. C.’s terminally ill mother. While an absence for such caregiving is an allowed absence, persons claiming such an allowed absence may only spend 45 additional days out of state. The C.s’ non-caregiving days out of state far exceed 45 days. The C.s contend that they continued to vacation out of state based on incorrect advice from a Division representative. The C.s have not sufficiently supported this equitable estoppel argument. Accordingly, the Division correctly denied the C.s’ 2023 PFD applications.

**II. FACTS**

T. and S. C. are longtime Alaskans who have received PFDs regularly since 1982.<sup>1</sup> The C.s spent the first 75 days of 2022 outside Alaska on vacation.<sup>2</sup> While staying with them out of state, Mr. C.’s mother was diagnosed with a terminal illness. The C.s spent the next 42 days caring for the mother.<sup>3</sup> The C.s then remained out of state an additional 37 days on vacation before returning to Alaska after June 4, 2022.<sup>4</sup>

According to Ms. C., she looked at the Division’s website for guidance on how many more days the C.s could spend out of state in 2022 and remain eligible for a PFD.<sup>5</sup> She then went to the Division’s office in late August to ask about additional absences. According to Ms. C., “I knew we were entitled to the 180 days. But I had heard and read that it was, there

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<sup>1</sup> Ex. 1 at 6, 12.

<sup>2</sup> T. C. testimony. On their application, the C.s initially indicated their first vacation lasted through March 3, 2022, when they started terminally ill care out of state through April 28, 2022. Ex. 1 at 5, 10. The Division accepted these dates, even during the hearing. Ms. C., however, testified that they did not begin providing care until April 17, 2022.

<sup>3</sup> T. C. testimony.

<sup>4</sup> Ex. 1 at 5, 10.

<sup>5</sup> T. C. testimony.

was an additional time.”<sup>6</sup> Ms. C. contends a Division representative “said you get 180 days plus 45 days for caring for a terminally ill parent.”<sup>7</sup> Ms. C. further stated, however, that this representative, “didn’t explain the rule at all. She just said additional 45 days.”<sup>8</sup>

The C.s left the state for two more vacations in 2022 — 29 days in September and October and 30 days in December.<sup>9</sup>

The Division denied the C.s’ 2023 PFD applications because they were absent from the state during the 2022 qualifying year for more days than allowed by law.<sup>10</sup> Specifically, the Division found that the C.s were ineligible under a statutory provision specifying that when applicants claim an allowed absence for medical caregiving, they may spend no more than 45 additional days outside Alaska during the qualifying year.<sup>11</sup> The C.s requested informal appeals, arguing that the Division had told them they could be absent 45 days in addition to the 180.<sup>12</sup> The Division again found the C.s ineligible because of their absences from the state.<sup>13</sup> The C.s requested these formal appeals.<sup>14</sup> A hearing was held January 18, 2024.

### III. DISCUSSION

Generally, a person must physically reside in Alaska to be eligible for a PFD. A resident may generally spend up to 180 days outside the state for any reason and remain eligible for a PFD.<sup>15</sup> There are also specific exceptions allowing for longer absences outside the state. One of those exceptions is to provide care to a terminally ill family member.<sup>16</sup> But when a person claims an exception, the 180-day rule no longer applies.<sup>17</sup> Rather, when a person claims an allowed absence for providing terminally ill care, the person may spend only 45 additional days outside the state during the qualifying year to remain eligible.<sup>18</sup> The C.s had already exceeded those 45 days by the time they started caring for Mr. C.’s mother in April.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Ex. 1 at 5, 10.

<sup>10</sup> Ex. 3.

<sup>11</sup> *Id.*; AS 43.23.008(a)(17)(C).

<sup>12</sup> Ex. 4.

<sup>13</sup> Ex. 5.

<sup>14</sup> Ex. 6.

<sup>15</sup> AS 43.23.008.

<sup>16</sup> AS 43.23.008(a)(7).

<sup>17</sup> AS 43.23.008(a)(17)(A). This is true for all exceptions except military service. *Id.*

<sup>18</sup> AS 43.23.008(a)(17)(C).

Thus their only option to remain eligible was to forego claiming a terminally ill care absence and instead comply with the 180-day rule.

The C.s instead left the state for two additional vacations, bringing their total days outside Alaska in 2022 to 214, 172 days of which were for vacation. Because their vacation days exceed 45, the C.s are ineligible if claiming an allowed absence for terminal care. And because the total days exceed 180, the C.s would be ineligible if not claiming any of the time was spent caring for a terminally ill relative.

The C.s argue that they should nonetheless be eligible because they exceeded 180 days in reliance on the Division's statement about allowed absences. This is effectively an argument for equitable estoppel. To support an equitable estoppel claim, the C.s need to show: "(1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury."<sup>19</sup>

The C.s contend the Division told them they could be absent 180 days plus 45 days for terminal care. The evidence, on balance, does not support this claim. Ms. C. acknowledged that she consulted the Division's website. Under the heading "Medical, Family Care, and Other Absences" the Division's website states that if "you are claiming an allowable absence of more than 180 days, you are limited to 45 additional days for any reason, regardless of the circumstances."<sup>20</sup> This language is perhaps not as explicit as it could be, but it is consistent with the law: that when claiming a special exception for being absent more than 180 days, the number of days that don't fall within that exception may not exceed 45.<sup>21</sup> The Division's website goes on to provide a hypothetical example:

You are out of state from January 5 to April 8 receiving continuous medical treatment under a licensed physician's care (an allowable absence). Later that year you are absent from August 10 through September 29 for vacation (50 days). You are absent from October 20 through December 31 again receiving continuous medical treatment under a licensed physician's care. Even though you were on an allowable absence during the year, you will not be eligible for a dividend because you had more than 45 additional days of absences during the time you were on

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<sup>19</sup> *Crum v. Stalnaker*, 936 P.2d 1254, 1256 (Alaska 1997).

<sup>20</sup> Ex. 7.

<sup>21</sup> AS 43.23.008(a)(17)(C).

vacation in August and September. To be eligible for a dividend, you would have needed to be absent less than 46 additional days.<sup>22</sup>

Like this hypothetical, the C.s had multiple 2022 absences, some for vacation, some that fit within a medical/family care exception. The hypothetical explains that even though some of the absences fall within an exception, a person is not eligible for a PFD if “you had more than 45 additional days of absences during the time you were on vacation.” Ms. C. admits reading this information.

When she went to the Division’s office for further information, Mr. C. contends that a Division representative “said you get 180 days plus 45 days for caring for a terminally ill parent,” but that she “didn’t explain the rule at all. She just said additional 45 days.”<sup>23</sup> Ms. C. appeared credible and sincere in her testimony. But this evidence of what the Division representative supposedly stated is hearsay. While hearsay may be considered in an administrative proceeding, it is afforded less weight.<sup>24</sup> Furthermore, Ms. C. stated that the representative did not explain the rule, “just said additional 45 days.” The C.s could have remained eligible for a PFD if their vacation days were limited to 45 days in addition to their terminal care absence. Thus if the representative referenced an additional 45 days, as Ms. C. recalls, that was correct. Ms. C. may have *understood* this to mean 45 days of terminal illness care, but is not certain from her own testimony whether this is what the Division representative actually said. This uncertainty, plus the fact that it is hearsay, does not show by a preponderance of the evidence that the Division representative in fact told Ms. C. that she and her husband to take 180 days of vacation in addition to their absence for terminally ill care.

Nor do the C.s’ PFD applications indicate they believed they could take up to 180 days’ vacation plus up to 45 days for terminally ill care. Both claimed 56 days for terminally ill care on their applications.<sup>25</sup> It was only on appeal, while trying to argue reliance on the meeting with the Division representative that the C.s asserted only 42 days of terminally ill care. Whether it was 56 or 42 does not matter under the law. But the fact that they initially claimed 56 days contradicts their claim that they relied on the Division’s representation that they could take

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See, e.g., In re KD*, OAH 16-0753-SAN at 6 (Commissioner Health and Social Services 2017) (hearsay admissible but “is accorded less weight”).

<sup>25</sup> Ex. 1 at 5, 10.

additional vacation and remain eligible for a PFD because their terminally ill care absence was within a 45-day limit.

Ms. C.'s understanding of what the Division representative said is further at odds with the Division's website. Ms. C. admits reviewing these statements. The website includes the hypothetical that if a person is claiming a medical-related exception, additional vacation days may not exceed 45 days. This is directly contradictory to what Ms. C. understood the Division representative to have told her — that the C.s could take up to 180 days' vacation and that it was their *terminally ill care absence* that was limited to 45 days. In the face of an oral statement that directly contradicts a government agency's written statement, it is not reasonable to rely on the oral one without seeking further clarification.

The C.s sincerely intended to remain PFD-eligible for 2023 and took efforts to determine the amount of vacation they could take to remain so. It is unfortunate that they did not fully understand the law. But not knowing or understanding the law does not excuse failure to comply with it.<sup>26</sup> On balance, the evidence here does not show that the C.s' misunderstanding of the law was due to the Division's statements or the C.s' reasonably relied on the Division's statements. Ms. C.'s assertion of what the Division representative told her is unclear and hearsay. She also reviewed the Division's website, which contradicts the C.s' understanding that they could take 180 days of vacation in addition to an absence for terminally ill care. The C.s appear to have sincerely believed they could take up to 180 days of vacation in addition to their terminally ill care absence, but that belief was not reasonable under these circumstances. The C.s have thus not shown that they should be eligible under a legal theory of equitable estoppel.

The legislature set strict restrictions on absences for PFD eligibility in statute. The Division is bound by this statute and has no authority to waive these rules, no matter how compelling a person's reasons are for being out of state.<sup>27</sup> The C.s's absences in 2022 exceed what the statute allows to remain eligible for a 2023 PFD.

#### IV. CONCLUSION

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<sup>26</sup> *In re W.H. and E.G.S.*, OAH 09-0308-PFD at 2 (Commissioner Revenue 2009) ("as a general rule, people are presumed to know the law. Consequently, an applicant's claim that they were unaware of statutory requirements is not persuasive.").

<sup>27</sup> *See In re E & BH*, OAH 08-0706-PFD (Commissioner Revenue 2009) (couple who vacationed 179 days and then remained out of state an additional 8 days for an unplanned medical emergency could not qualify for PFDs because the total days exceeded 180 days and the non-medical exception days exceeded 45 days).

For the reasons discussed above, the C.s are not eligible for a 2023 PFD. The Division's decisions are affirmed.

Dated: January 22, 2024

By: Signed  
Signature  
Rebecca Kruse  
Name  
Administrative Law Judge  
Title

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

## 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 15th day of February, 2024.

By: Signed  
Signature  
Rebecca Kruse  
Name  
Administrative Law Judge  
Title

