

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

In the Matter of	)	
	)	
G. N., JR. AND K. N. (MINOR)	)	OAH No. 25-0546-PFD
	)	
2024 Permanent Fund Dividend	)	

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**DECISION**

**I. Introduction**

G. N., Jr., is longtime Alaska resident who applied for a 2024 Permanent Fund Dividend (“PFD”) on behalf of himself and his minor daughter. In his application, Mr. N. disclosed that he had been absent from Alaska for 238 days during the 2023 qualifying year while assisting with the care of his then 90-year-old mother. The Department of Revenue’s Permanent Fund Division (the “Division”) denied these applications on account of Mr. N. being absent from Alaska more than 180 days during 2023.

Mr. N. challenges this determination under statutory provisions which allow PFD applicants to be absent from Alaska for more than 180 days if they are providing care for a terminally ill family member, or a close relative who is suffering from a critical illness requiring treatment at a special medical facility. While it is undisputed that Mr. N.’s mother was suffering from numerous health issues in 2023 attributable to her advanced age, no evidence was submitted showing that she suffered from a “terminal illness” as the term is commonly defined in other legal contexts. The fact Mr. N. also provided care for a brother who was suffering from diabetes-related health conditions does not alter the outcome here since no evidence was offered showing those conditions required treatment at a special medical facility. Accordingly, the Division’s denial of the applications that Mr. N. submitted for the 2024 PFD is AFFIRMED.

**II. Facts**

Mr. N. has lived in Alaska for approximately 40 years. During that time, he had very limited contact with his mother, who was (until recently) living in No Name. After his mother turned 90, Mr. N. dedicated himself to spending more time with her. To that end, in 2023 he made four trips to No Name where he spent 238 days staying with his mother.

While there, he assisted with her care by shopping, preparing meals, and providing companionship. Mr. N.’s daughter, K., accompanied him on these trips.<sup>1</sup>

The health of Mr. N.’s mother was severely impaired in 2023 due to a litany of conditions common for people of such advanced years, including arthritis, an unspecified heart condition, difficulties with bladder and bowel control, osteoporosis, and limited mobility.<sup>2</sup> However, no evidence was offered showing that she suffered from any specific illness or condition that was likely to result in imminent death. Mr. N.’s mother was still alive when the hearing in this matter was held on April 25, 2025, though she requires extensive care from family members.<sup>3</sup>

In commendable and forthright manner, Mr. N. detailed these extended absences from Alaska when he applied for the 2024 PFD on behalf of himself and his daughter. While Mr. N. described these absences as “visiting daughter’s grandmother” in his application, (and “visiting grandmother” in his daughter’s application),<sup>4</sup> the fact he was providing care to his mother during these visits is not disputed by the Division. However, the fact Mr. N. described his trips to No Name as mere visits caused the Division to deny these applications under AS 43.23.008(a)(17), which establishes a general rule that Alaska residents are ineligible to receive a PFD if they are absent from the state more than 180 days during the qualifying year for reasons the legislature has not classified as “allowable.”<sup>5</sup>

Mr. N. timely challenged this denial through an informal appeal where he explained that he had been caring for his elderly mother during his trips to No Name, and assisting his family in caring for a brother who suffered from diabetes-related health problems.<sup>6</sup> Mr. N. noted that his mother had “many health issues” and “hardly moves.”<sup>7</sup> The Division denied this appeal based on the following grounds:

The aging process and specific requirements to care for elderly relatives is not listed as an allowable category of absences. This is distinct from approved absences to provide out-of-state care for “continuous medical treatment” and “terminally ill care for qualifying relatives.”<sup>8</sup>

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<sup>1</sup> Mr. N. hearing testimony.

<sup>2</sup> Exhibit 3 at p. 2; Exhibit 5 at p. 2; Mr. N. hearing testimony.

<sup>3</sup> Mr. N. hearing testimony.

<sup>4</sup> Exhibit 1 at pp. 4 and 9.

<sup>5</sup> Exhibit 2 at pp. 1-2.

<sup>6</sup> Exhibit 3 at p. 2.

<sup>7</sup> Exhibit 3 at p. 2.

<sup>8</sup> Exhibit 4 at p. 2.

Mr. N. formally appealed this decision. In his written appeal request, Mr. N. again asserted that his mother was terminally ill given the short amount of life expectancy she had in 2023 due to her advanced age and accumulating health conditions.<sup>9</sup> In response, the Division sent Mr. N. a form that a physician could quickly fill out to attest that she suffered from a terminal illness.<sup>10</sup> Unfortunately, however, Mr. N. was unable to locate any of the medical providers who had been treating his mother in 2023.<sup>11</sup>

During the hearing on his formal appeal, Mr. N. testified at length regarding his mother's advanced age and steadily deteriorating health. He also offered details regarding the challenges he and other family members faced in caring for his diabetic brother in 2023. However, he did not offer any medical records or other documentary evidence in support of his testimony. The Division did not present any witness testimony but offered seven exhibits that were admitted into evidence.

### **III. Discussion**

The applicant bears the burden of proving that the Division wrongly denied a PFD.<sup>12</sup> To qualify for a PFD, an Alaska resident must be physically present in Alaska for a minimum of 180 days during the qualifying year, unless the absence is for one of the reasons considered "allowable" as set out in AS 43.23.008(a)(1) – (16).<sup>13</sup> Since Mr. N. spent 238 days in No Name during 2023, he and his daughter are not eligible for the 2024 PFD unless his absence from Alaska qualifies as allowable under the following provisions of AS 43.23.008:

(a) Subject to (b) and (c) 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

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(6) providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as

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<sup>9</sup> Exhibit 5 at p. 2.

<sup>10</sup> Exhibit 6 at p. 3.

<sup>11</sup> Mr. N. testified that his mother's primary physician in 2023 was now deceased, and that he had been unable to locate any other medical professional able to fill out this form.

<sup>12</sup> 15 AAC 23.113(b)(1).

<sup>13</sup> AS 43.23.008(17)(A). An individual may still be considered an Alaska resident even if they are found ineligible to receive a PFD on account of being absent from the state for more than 180 days during a qualifying year.

recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;

(7) providing care for the individual's terminally ill family member[.]

While Mr. N. testified that he spent some time in 2023 caring for his brother, he did not offer any evidence showing that an attending physician recommended some type of specific treatment plan, or that his brother's diabetes-related conditions required care at a "medical specialty complex." Without this evidence, none of the time Mr. N. spent in No Name assisting with his brother's care can be classified as an allowable absence under AS 43.23.008(a)(6).

The time Mr. N. spent in No Name caring for his mother does not qualify as an allowable absence under AS 43.23.008(a)(7) since he failed to show that she suffered from a terminal illness. The problem Mr. N. faces in this regard is that declining health attributable to the natural aging process is not usually considered a terminal illness. While Alaska's PFD statutes do not specifically define the phrase "terminal illness," state legislatures and administrative agencies who have provided definitions for this term in other legal contexts typically require proof that a person has been medically diagnosed with specific disease or illness that is likely to cause death within six months or less.

An example of this is found at AS 08.64.367, which is part of a series of statutes enacted by the Alaska Legislature allowing the use of novel or non-traditional medical treatments for persons suffering from a terminal illness – which is defined as "a disease that, without life-sustaining procedures, will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely."<sup>14</sup> In similar manner, regulations adopted by the Alaska Department of Health for Medicaid hospice benefits define a terminal illness as "an illness for which an individual has a life expectancy of less than six months if the illness runs its normal course . . ."<sup>15</sup>

Near identical definitions for "terminal illness" are found in statutes adopted in other states. For example, under an Oregon law that permits terminally ill individuals to seek physician assistance in ending their lives to avoid the suffering of a prolonged dying process, a terminal illness is defined as "an incurable and irreversible disease that has been

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<sup>14</sup> AS 08.64.367(d)(2).

<sup>15</sup> 7 AAC 12.349(19).

medically confirmed and will, within reasonable medical judgment, produce death within six months.”<sup>16</sup> A similar statute adopted in the state of Washington utilizes an identical definition.<sup>17</sup> Under the California End of Life Option Act, the phrase “terminal disease” is defined as “an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.”<sup>18</sup>

Administrative agencies in other jurisdictions have likewise adopted definitions for “terminal illness” which require a medical diagnosis of a condition or illness that is likely to cause death within six months. The leading example in this regard is the federal policy manual for the Medicare program, which provides that a person is considered terminally ill if “the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.”<sup>19</sup> Similar definitions of terminal illness have been adopted by regulatory agencies in Arkansas, California, Illinois and Texas, among others.<sup>20</sup>

To be clear, there are easily imagined scenarios where medical conditions often attributable to aging might qualify as a terminal illness, such as Alzheimer’s disease, pulmonary failure, cardiovascular disease, or other organ failure. Here, however, Mr. N. offered no evidence showing that, at the time he was providing care for his mother in 2023, a qualified medical professional had determined that she suffered from a medical condition or illness that was likely to cause her death within a set amount of time. While it is certainly true that Mr. N.’s mother had an uncertain life expectancy in 2023, this fails to establish that she was “terminally ill” for purposes of AS 43.23.008(a)(7). Indeed, the fact

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<sup>16</sup> ORS 127.800(12).

<sup>17</sup> RCW 70.245.010(13).

<sup>18</sup> California Health & Safety Code § 443.1(r).

<sup>19</sup> Medicare Benefit Policy Manual, Chapter 9, § 20.1.

<sup>20</sup> *See, e.g.*, Arkansas Administrative Code 054.00.114-2 (a terminal illness is “an illness, a progressive disease, or an advanced disease state from which: (A) there is no expectation of recovery; and (B) death as a result of the illness or disease is reasonably expected within six (6) months”); Illinois Administrative Code 946.10 (defining terminal illness as an “a debilitating condition or other illness for which the qualifying patient has received a diagnosis for a life expectancy of six months or less”); 25 Tex. Admin. Code § 1.461 (a terminal illness is an “advanced state of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely”); 15 California Code of Regulations § 3000 (terminal illness “means an incurable disease process with progression unresponsive to medical intervention where a medical doctor estimates that death will occur within a six-month period”).

Mr. N.'s mother was still alive in April 2025 effectively disproves the argument that she was terminally ill in 2023.<sup>21</sup>

Since Mr. N.'s daughter accompanied him on his trips to No Name in 2023, she is likewise ineligible to receive the 2024 PFD. Even if she had not accompanied her father on these trips, the fact she did not have an adult sponsor who was eligible to receive a dividend that year would have caused her to be ineligible.<sup>22</sup>

#### **IV. Conclusion**

Since Mr. N. and his daughter were both absent from Alaska for more than 180 days in 2023 for reasons not excused under AS 43.23.008, the Division correctly determined that they were ineligible to receive the 2024 PFD. Accordingly, the Division's decision to deny their applications is affirmed.

Dated: May 2, 2025

By: Signed  
Signature  
Max Garner  
Name  
Administrative Law Judge  
Title

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<sup>21</sup> Even though there is near legal unanimity regarding the definition of "terminal illness," greater clarity would be provided to PFD applicants through adoption of a regulation providing a set definition for this term as it appears in AS 43.23.008(a)(7).

<sup>22</sup> 15 AAC 23.113(b)(1).

## 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 9<sup>th</sup> day of June, 2025.

By: Signed  
Signature  
Adam Crum  
Name  
Commissioner of Revenue  
Title

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