

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

In the Matter of	)	
	)	
O. D.	)	OAH No. 23-0393-PFD
	)	

DECISION

I. Introduction

O. D. worked outside of the state of Alaska as a traveling physician for most of 2021, the qualifying year for a 2022 Permanent Fund Dividend (PFD). Her application for a 2022 PFD was denied on the grounds that she had spent more than 180 days outside of the state during the qualifying year. After a full hearing and upon careful consideration of the evidence, the denial is upheld because Dr. D.’s absence from Alaska during 2021, while understandable, was not for reasons deemed “allowable” under the statutes governing the PFD program.

II. Background

O. D. has lived in Anchorage since 2017.¹ She holds a medical license from the State of Alaska and is self-employed as a traveling physician.² She was eligible for a PFD every year from 2018 to 2021.³

Dr. D. timely submitted an online application for a 2022 PFD. On her application form, she indicated that she was absent from Alaska for a period of time in 2021, listing the beginning date of her absence as June 1, 2021 and the ending date as December 31, 2021, for a total of 213 days.⁴ She selected an absence code of “J”, pertaining to absences for employment purposes, and she described the reason for her absence as “Traveling Healthcare Worker, Intermittent Travel Out of State.”⁵

The Division denied Dr. D.’s application on the grounds that her absence of more than 180 days for her employment during the 2021 qualifying year did not fall within an allowable reason under the PFD statutes and regulations.⁶ Dr. D. requested an informal

¹ Testimony of O. D.
² Ex. 8.
³ Ex. 1 p. 6.
⁴ Ex. 1, p. 5.
⁵ Ex. 1, p. 5.
⁶ Ex. 3.

appeal, and, after her informal appeal was denied, timely requested a formal appeal.⁷ A hearing was held on July 17, 2023.

In the appeal process, Dr. D. admitted she had been absent from Alaska for 213 days in 2021,⁸ but argued she should nevertheless be eligible for a PFD for several reasons. She claimed she was an essential worker during the COVID-19 pandemic, which required her to follow strict quarantine and travel protocols that limited her ability to travel back to Alaska.⁹ She worked where she was needed treating sick patients at critically understaffed hospitals, spending a “significant portion of 2021” at an underserved hospital in Arizona.¹⁰ She argued that under those circumstances, finding her ineligible for a PFD because she was absent more than 180 days would effectively punish her for doing her job.¹¹

Moreover, Dr. D. maintained that she should have been “given credit as an essential worker” for the days in 2021 that the public emergency was still in effect - i.e., she should not have been considered absent from Alaska during that time.¹² Asserting that “Governor Dunleavy extended the Covid emergency until April 30, 2021,” she reasoned, “If those days” (January 1 through April 30, 2021) “are considered as present then my work outside of Alaska falls to less than the 180-day limit,” and she should qualify for the 2022 PFD.¹³

Further, Dr. D. claimed that she had volunteered with “Alaska Response [sic]. . . to distribute vaccines to the public during the initial Covid vaccination rollout in Alaska in winter 2021.”¹⁴ Alaska Respond is an online registration system for health care professionals seeking to volunteer their services during a disaster or public emergency.¹⁵

⁷ Exs. 5, 6, and 7.

⁸ Ex. 9; Testimony of O. D.

⁹ Ex. 9, Testimony of O. D.

¹⁰ Ex. 9.

¹¹ Testimony of O. D.

¹² Ex. 9; Testimony of O. D.

¹³ Ex. 9. Notably, none of the dates Dr. D. reported being absent from Alaska on her application - June 1 through December 31, 2021 – occurred from January 1 through April 30, 2021. When asked to clarify this inconsistency, Dr. D. stated that she did not report her exact dates of absence, claiming the Division “does not make it easy for people who are in and out of the state constantly” because the application form does not provide sufficient space for multiple absences. Testimony of O. D. Division representative Peter Scott responded that the form does in fact enable an applicant to document multiple absences, as evidenced by the applications received each year from pilots and others who travel frequently in and out of the state and list the beginning and end dates of each absence. Testimony of Peter Scott. Dr. D. is cautioned of the obligation to accurately report the dates of her actual absences from Alaska to avoid running afoul of 15 AAC 23.103(j), which states that an application will be denied if the Division determines the applicant has “intentionally, recklessly, or *negligently* provided false information or *omitted material facts*, including failure to disclose a reportable absence to the government.”

¹⁴ Ex. 9.

¹⁵ <https://www.akrespond.alaska.gov/>

Dr. D. urged that “voluntary deployments with Alaska Response [sic] to sites outside Alaska should not be held against health care workers.”¹⁶

She also argued that the time health care workers spend traveling outside of Alaska to obtain continuing medical education unavailable in state should not count against them for PFD purposes.¹⁷ Additionally, she argued that eligibility for the 2022 Alaska Energy Relief Rebate should not be based on PFD eligibility. She maintained that “residents should be given the energy credit apart from its association with the 2021 PFD. I live in Anchorage and pay utilities in Anchorage, why would this be withheld after a difficult year?”¹⁸

III. Discussion

As the appellant, Dr. D. has the burden of proving that she is eligible for a 2022 PFD.¹⁹ To be eligible, an applicant must have been physically present in Alaska all through the qualifying year, or absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences”, AS 43.23.008.²⁰ These reasons include such circumstances as serving in the Peace Corps, as a Congressional aide, or as an active duty member of the armed forces, or receiving vocational or professional education out of state where there no comparable in-state program.²¹ There is also a catchall provision allowing absences “for any reason consistent with the individual’s intent to remain a state resident,” but it applies only if the absences do not exceed 180 days.²²

Notably, there formerly was a provision that made it possible for Alaskans who could not return to the state due to COVID-19 to preserve their eligibility for a PFD. Section 16 of SB 241, adopted in the closing days of the 2020 legislative session to mitigate the impact of COVID-19, allowed individuals to remain eligible if the only reason they were absent from the state was because of actions to prevent the spread of COVID-19, such as a voluntary or compulsory quarantine.²³ This effectively exempted those individuals from the 180-day limit on absences. But the legislation contained express language that Section 16 would be repealed no

¹⁶ Ex. 9.

¹⁷ Ex. 9; Testimony of O. D.

¹⁸ Ex. 9.

¹⁹ 15 AAC 05.030(h).

²⁰ AS 43.23.005(a)(6).

²¹ AS 43.23.008(a)(1)-(16).

²² AS 43.23.008(a)(17)(A).

²³ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241); <https://www.akleg.gov/PDF/31/Bills/SB0241A.PDF>

later than November 15, 2020.²⁴ This is the case even though Governor Dunleavy extended the public health emergency until February 14, 2021²⁵ – i.e., Section 16 was not extended coterminous with the public health emergency. Because the exception in Section 16 was repealed on November 20, 2020, it did not apply during 2021 calendar year, and thus, it did not operate to preserve eligibility for individuals applying for 2022 dividends.

A. *Dr. D. is not eligible for a 2022 PFD*

Dr. D.’s absence from Alaska of 213 days during 2021 does not fall within the catch-all exception because she was gone from Alaska more than 180 days. Nor did her absence fall within any of the allowable reasons specified in AS 43.23.008(a) for a long-term absence from the state. There is no exception in the statute for physicians treating patients out-of-state, even during the pandemic. And as explained above, Section 16 of SB 241 exempting applicants from the 180-day limit on absences for conduct in mitigation of COVID-19 did not apply in 2021; thus, it did not preserve Dr. D.’s eligibility for a 2022 PFD.

Regarding Dr. D.’s contention that healthcare workers should not be punished for PFD eligibility purposes when they travel outside Alaska for continuing medical education, AS 43.23.008(a) does contain an allowable absence for individuals “receiving vocational, professional, or other specific education on a full-time basis” out of state where a comparable in-state program is not reasonably available.²⁶ But Dr. D. provided no documentation or other evidence that she was enrolled in or received any continuing education credits while she was absent from Alaska in 2021. Thus, she has not shown that the professional education exception applies to her circumstances.

As for the argument that the deployment of healthcare workers out of state to volunteer for Alaska Respond should not impact their PFD eligibility, the only volunteer work Dr. D.’ described doing with Alaska Respond in 2021 was distributing vaccines during the vaccination rollout in Alaska. She provided no documentation or other evidence that she was deployed out

²⁴ *Id.*

²⁵ Ex. 10. In its informal appeal decision, the Division erroneously identified the end date of the public health emergency as April 30, 2021, rather than February 14, 2021. Ex. 3, p. 2.

²⁶ AS 43.23.008(a)(2); 15 AAC 23.163(c)(2).

of state by that organization in 2021. In-state volunteer work has no bearing on an individual's eligibility for a 2022 PFD.²⁷

In short, there is no provision of law that covers Dr. D.'s 213-day absence in 2021 and allows her to remain eligible for the 2022 PFD. Neither the Division nor the administrative law judge has the legal authority "to grant PFDs to people who were absent for reasons, no matter how good, that are not allowable" under AS 43.23.008(a) and its implementing regulations.²⁸ While Dr. D.'s work treating sick out-of-state patients during the COVID-19 pandemic was certainly commendable, it does not entitle her to a dividend in this case.

B. *Dr. D. is not eligible for the 2022 Energy Relief Rebate separately from the 2022 PFD.*

The question of whether eligibility for a 2022 energy relief payment is dependent upon eligibility for a 2022 PFD was previously addressed in *In re: C.C.*, OAH No. 22-0852 (Commissioner of Revenue 2022). As explained in that case, the Energy Relief Rebate was adopted as a component of the 2022 dividend, not as a separate payment. Specifically, Section 84 of House Bill 281 appropriated funds "to the Dividend Fund" administered by the Department of Revenue for "a one-time energy relief payment as part of the permanent fund dividend."²⁹ Moreover, there was no separate application process for an energy relief payment. "Because the legislature expressly made the energy relief part of the PFD and there was no separate application process, an applicant's eligibility for a 2022 PFD includes the energy relief component of that PFD."³⁰ Thus, Dr. D.'s ineligibility for a 2022 PFD also renders her ineligible for the energy relief payment, despite her good public policy reasons to the contrary.

IV. Conclusion

Because Dr. D.'s absence from Alaska during 2021 does not fall within any of the allowable absences enumerated in the PFD statute, she is not eligible for the 2022 PFD. Nor is she eligible for the 2022 energy relief payment, because that payment was part of the 2022 PFD. The PFD Division's decision to deny Dr. D.'s application for a 2022 PFD is therefore AFFIRMED.

²⁷ Because Dr. D. has not shown any of her absences in 2021 were for out-of-state deployments with Alaska Respond, there is no need to address the question of whether out-of-state volunteer work with Alaska Respond would be an allowable absence under the PFD statutes.

²⁸ See, e.g., *In re: J. and D.B.*, OAH No. 05-0282 (Commissioner of Revenue 2006), p. 2.

²⁹ <https://www.akleg.gov/PDF/32/Bills/HB0281G.PDF#page=201> (See page 202)

³⁰ *In re: C.C.*, OAH 22-0852-PFD at p. 5.

Dated: August 21, 2023

Signed

Lisa M. Toussaint
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 15th day of September, 2023.

By: Signed
Lisa M. Toussaint
Administrative Law Judge

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