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

In the Matter of	)	
	)	
Q. & C. C.	)	OAH No. 23-0540-PFD
	)	
	)	

DECISION

I. INTRODUCTION

The Permanent Fund Dividend Division ("Division") denied 2022 Permanent Fund Dividends ("PFDs") for Q. and C. C. because they were absent from the state more days than allowed by statute. Part of that absence was due to unanticipated medical treatment. While an absence for medical care or caregiving is an allowed absence, persons claiming such an allowed absence may only spend 45 additional days out of state — and the C.s had already spent much longer out of state when the medical issue arose. Their absence was thus longer than allowed by statute and the Division correctly denied their 2022 PFD applications.

II. FACTS

Q. and C. C. are longtime Alaskans who have received PFDs regularly since 1982.[1] The C.s spent the first 134 days of 2021 outside Alaska on vacation.[2] They later spent the last 109 days of the year out of state for Mr. C. to receive cancer treatments and Ms. C. to serve as his caregiver.[3]

The Division denied the C.s's 2022 PFD applications because they were absent from the state during the 2021 qualifying year for more days than allowed by law.[4] Specifically, the Division found that the C.s were ineligible under a statutory provision specifying that when applicants claim an allowed absence for medical treatment or caregiving, they may spend no more than 45 additional days outside Alaska during the qualifying year.[5] The C.s requested informal appeals, arguing that this 45-day rule should not apply to them.[6] The

1 Ex. 1 at 6, 12.
2 Ex. 1 at 5, 11.
3 *Id.*
4 Ex. 3.
5 *Id.*; AS 43.23.008(a)(17)(C).
6 Ex. 4.

Division again found the C.s ineligible because of their absences from the state.[7] The C.s requested these formal appeals, to be heard on correspondence.

III. DISCUSSION

Generally, a person must physically reside in Alaska to be eligible for a PFD. A person who is absent from the state for more than 180 days is not eligible for a PFD for that qualifying year unless they fall into one of several narrow exceptions.[8] One of those exceptions is for receiving continuous medical treatment as advised by a licensed physician.[9] The Division does not dispute that Mr. C.'s cancer treatments fall within this exception.[10] There is another exception for providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness.[11] The Division does not dispute that Ms. C. was providing her husband such care during his cancer treatments.[12] Thus the Division did not deny their PFD applications for being out of state for Mr. C.'s cancer treatments. The Division denied their applications because of the additional time they were outside the state on vacation.

A resident may generally spend up to 180 days outside the state for any reason and remain eligible for a PFD.[13] Thus when the C.s vacationed out of state for the first 134 days of the year, they were well within that allowance. But this 180-day allowance does not apply when a person also claims an absence under one of enumerated exceptions.[14] When a person claims an allowed absence for medical care or caregiving, the person may spend only 45 additional days outside the state during the qualifying year to remain eligible.[15] The C.s had already exceeded those 45 days when they traveled outside for his cancer treatments.

The C.s' total days outside the state in 2021 — 243 days — exceeds the 180 days a person may be out of state without an allowed absence. The C.s have allowed absences for the 109 days they were absent for his cancer treatments. But by claiming that absence as an allowed absence, the statute does not allow more than 45 additional days out of state. Their 134 days of vacation at the beginning of the year well exceeded those 45 days.

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7 Ex. 5.
8 AS 43.23.008(a).
9 AS 43.23.008(a)(5).
10 Division's Position Statement.
11 AS 43.23.008(a)(6).
12 Division's Position Statement.
13 AS 43.23.008.
14 AS 43.23.008(a)(17)(A). This is true for all exceptions except military service. *Id.*
15 AS 43.23.008(a)(17)(C).

The C.s argue that the 45-day rule should not apply to them because their circumstances are different from an example the Division has posted to its website of how the 45-day rule works in practice. Specifically, the C.s point to the example including more than 180 days for medical treatment, whereas the C.s' medical absence was less than 180 days. The Division's example, however, is merely an illustration of how the statute applies to one set of facts, not a representation of all statutory requirements. In the statute, there is no 180-period applicable to medical absences. The statute sets forth a 180-day limit when an applicant is *not* claiming an allowed absence, including absences for medical care and caregiving:

> 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 . . . for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed . . . 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection *if the individual is not claiming an absence under (1), (2), or (4)--(16) of this subsection*.[16]

If the C.s's total absences for 2021 had been less than 180 days total, they would not need to claim any allowed absence for medical care or caregiving. But because they were absent more than 180 days in total, they need some allowed absence. They do. But when claiming an allowed absence for medical care and caregiving, any *additional* absences cannot exceed 45 days:

> 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 . . . for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed . . . 45 days in addition to any absence or cumulative absences claimed under (1)--(16) of this subsection *if the individual is claiming an absence under (4)--(16) of this subsection*.[17]

Their additional absence for vacation at the beginning of 2021 were 134 days. That exceeds the 45-day limit, so under the language of the statute, the C.s are not eligible for 2022 PFDs.

This result may seem harsh. When the C.s started 2021 on an extended out of state vacation, they had no way of knowing the year would end with a serious cancer diagnosis and the need to spend another extended period out of state for critical medical treatment. But the legislature set strict restrictions on absences for PFD eligibility in statute. The

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[16] AS 43.23.008(a)(17)(A) (emphasis added).
[17] AS 43.23.008(a)(17)(C) (emphasis added).

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.[18]

IV. CONCLUSION

While the C.s started 2021 with a vacation short enough to qualify for a PFD, when they were later outside the state for unanticipated cancer treatments, the C.s exceeded the total absence days allowed for any reason (180) and the total days allowed when claiming an allowed absence (45). As unfortunate and sympathetic as their circumstances may be, the statute sets strict absence limits that the Division must follow. The Division correctly denied their 2022 PFD applications. The decision is affirmed.

DATED: October 27, 2023.

Signed

Rebecca Kruse
Administrative Law Judge

[18] *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).

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 Tuesday of November 21, 2023.

By: *Signed*
Rebecca Kruse
Administrative Law Judge

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