

Alaska Statue Pertaining to Permanent Fund Dividends (Application and Allowable Absence)
AS 43.23.005 to AS 43.23.017 and Definitions AS 43.23.095

Chapter 43.23. PERMANENT FUND DIVIDENDS

Revisors Notes -

Chapter 99, SLA 1985 established, subject to a contingency requiring legislative action, an annuity program funded by permanent fund dividends. The contingency was never satisfied and the sections establishing the proposed annuity program were repealed by Sec. 17, ch. 20, SLA 2002.

Cross References -

For 1982 permanent fund dividend distribution, see Sec. 19, ch. 102, SLA 1982, in the Temporary and Special Acts; for provisions relating to the Permanent Fund Corporation, see AS 37.13.

Administrative Code -

For permanent fund dividend distribution, see 7 AAC 38.

For Alaska permanent fund dividend, see 15 AAC 23.

AG Opinions -

If the legislature enacts any other distribution program which is consistent with the intent of the permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of Sec. 16, art. IX, of the state constitution. 1983 Op. Att'y Gen. No. 01.

Decisions -

Statutory scheme of former AS 43.23.010 held unconstitutional. - The statutory scheme under former AS 43.23.010, by which the state distributes income derived from its natural resources to the adult citizens of the state in varying amounts, based on the length of each citizen's residence, violated the equal protection rights of newer state citizens. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

The state objectives of creating a financial incentive for individuals to establish and maintain Alaska residence, and assuring prudent management of the Permanent Fund and the state's natural and mineral resources are not rationally related to the distinctions Alaska seeks to make in the dividend program between newer residents and those who have been in the state since 1959. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Objective to reward citizens for past contributions is not a legitimate state purpose since this reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency and would permit the states to divide citizens into expanding numbers of permanent classes, a result which would be clearly impermissible. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

This statute does not impose any threshold waiting period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Permanent fund dividend payments were made for "public purpose" within the meaning of Alaska Const., Art. IX, Sec. 6. *Beattie ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), *aff'd sub nom. Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Permanent fund dividend payments subject to federal income tax. - Permanent Fund dividend payments are income and, since these payments are not excludable from gross income as "gifts", they are therefore subject to the federal income tax. *Beattie ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), *aff'd sub nom. Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Payments received under Alaska's Permanent Fund Dividend Program are subject to federal income tax. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Property of bankruptcy estate. - Debtor's permanent fund dividend, sent to IRS by the State of Alaska, is the property of the bankruptcy estate and subject to turnover by the IRS pursuant to 11 U.S.C. Sec. 541 and 542. Interest of IRS in permanent fund dividend was no greater than that of any other levying creditor. If levy is valid, IRS holds a perfected lien against debtor's permanent fund dividend. *Camacho v. United States*, 177 Bankr. 667 (Bankr. D. Alaska 1994).

Sec. 43.23.005. Eligibility.

(a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual

- (1) applies to the department;
- (2) is a state resident on the date of application;
- (3) was a state resident during the entire qualifying year;
- (4) has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year;
- (5) is
 - (A) a citizen of the United States;
 - (B) an alien lawfully admitted for permanent residence in the United States;
 - (C) an alien with refugee status under federal law; or
 - (D) an alien that has been granted asylum under federal law;
- (6) was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008; and
- (7) was in compliance during the qualifying year with the military selective service registration requirements imposed under 50 U.S.C. App. 453 (Military Selective Service Act), if those requirements were applicable to the individual, or has come into compliance after being notified of the lack of compliance.

(b) [Repealed, Sec. 18 ch 4 SLA 1992].

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent individual who is

eligible to receive a payment under this section. Notwithstanding (a)(2) - (4) of this section, a minor is eligible for a dividend if, during the two calendar years immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year.

(d) Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

(1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;

(2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a

(A) felony; or

(B) misdemeanor if the individual has been convicted of

(i) a prior felony as defined in AS 11.81.900; or

(ii) two or more prior misdemeanors as defined in AS 11.81.900.

(e) [Repealed, Sec. 64 ch 21 SLA 1991].

(f) The commissioner may waive the requirement of (a)(4) of this section for an individual absent from the state

(1) in a time of national military emergency under military orders while serving in the armed forces of the United States, or for the spouse and dependents of that individual; or

(2) while in the custody of the Department of Health and Social Services in accordance with a court order under AS 47.10 or AS 47.12 and placed outside of the state by the Department of Health and Social Services for purposes of medical or behavioral treatment.

(g) For purposes of applying (d)(1) of this section, the date the court imposes a sentence or suspends the imposition of sentence shall be treated as the date of conviction. For purposes of applying (d)(2)(B) of this section, multiple convictions arising out of a single criminal episode shall be treated as a single conviction.

(h) If an individual who would otherwise have been eligible for a permanent fund dividend dies after applying for the dividend but before the dividend is paid, the department shall pay the dividend to a personal representative of the estate or to a successor claiming personal property under AS 13.16.680. If an individual who would otherwise have been eligible for a dividend and who did not apply for the dividend dies during the application period, a personal representative of the estate or a successor claiming personal property under AS 13.16.680 may apply for and receive the dividend. If an individual who received a dividend for the year immediately before the qualifying year and who would otherwise have been eligible for a dividend dies during the qualifying year after having been a state resident for at least 180 days immediately before the date of death, notwithstanding (a)(1) - (3) and (a)(6) of this section, a personal representative of the estate or a successor claiming personal property under AS 13.16.680 may apply for and receive the dividend. Notwithstanding AS 43.23.011, an application for a

dividend may be filed by the personal representative or the successor under this subsection at any time before the end of the application period for the next dividend year.

History -

(Sec. 1 ch 102 SLA 1982; am Sec. 1 ch 57 SLA 1987; am Sec. 1 ch 54 SLA 1988; am Sec. 1 ch 159 SLA 1988; am Sec. 2, 3 ch 107 SLA 1989; am Sec. 1 ch 68 SLA 1990; am Sec. 46, 62 ch 21 SLA 1991; am Sec. 1 ch 68 SLA 1991; am Sec. 4 - 8, 18 ch 4 SLA 1992; am Sec. 2, 3 ch 46 SLA 1996; am Sec. 2 - 4 ch 44 SLA 1998; am Sec. 1 ch 91 SLA 1998; am Sec. 25 ch 92 SLA 2001; am Sec. 5 ch 89 SLA 2002; am Sec. 5 ch 64 SLA 2005; am Sec. 1 ch 22 SLA 2010)

Cross References -

For legislative findings in connection with the 1989 amendment to (a) of this section, see Sec. 1(a), ch. 107, SLA 1989 in the Temporary and Special Acts; for the application deadlines for minors who qualified for a dividend for 1992 because of the 1992 amendment to (c) of this section, see Sec. 19, ch. 4, SLA 1992 in the Temporary and Special Acts; for legislative purpose relating to the 1996 amendments amending subsection (d) and adding subsection (g), see Sec. 1, ch. 46, SLA 1996 in the Temporary and Special Acts.

Amendment Notes -

The first 1998 amendment, effective January 1, 1999, rewrote subsection (a); in subsection (d) substituted "qualifying year" for "calendar year immediately preceding that dividend year" in paragraphs (1) and (2); and, effective January 1, 2000, inserted "for at least 72 consecutive hours" in paragraph (a)(4).

The second 1998 amendment, effective June 13, 1998, added subsection (h).

The 2001 amendment, effective July 6, 2001, in subparagraph (d)(2)(B), added item (i) and the item (ii) designation, and, in item (ii), substituted "misdemeanors" for "crimes."

The 2002 amendment, effective January 1, 2004, added paragraph (a)(7) and made related stylistic changes.

The 2005 amendment, effective July 1, 2005, in subsection (f), deleted "In a time of national military emergency" from the beginning of the introductory language, added the paragraph (1) designation and added that language at the beginning of paragraph (1), and added paragraph (2).

The 2010 amendment, effective January 1, 2011, in subsection (h), inserted the third sentence, added "under this subsection" in the fourth sentence, and made stylistic changes.

Editors Notes -

Section 6, ch. 46, SLA 1996 provides that the 1996 amendments that amended subsection (d) and added (g) "apply only to individuals convicted of crimes committed after December 31, 1996" and that "[c]onvictions for crimes committed before January 1, 1997, may not be considered in determining the number of prior convictions for purposes of applying AS 43.23.005(d)(2)(B)."

Under Sec. 6, ch. 89, SLA 2002, paragraph (a)(7) applies to a person who applies for a permanent fund dividend on or after January 1, 2004.

History Reports -

For legislative letter of intent relating to the enactment of subsection (f) by Sec. 1 ch. 68, SLA 1991 (HCS CSSB 98(FIN)), see 1991 Senate Journal, pages 256, 257.

Decisions -

Constitutionality. - The 1989 amendment to paragraph (a)(2) of this section, imposing a two-year residency requirement for applicants, was unconstitutional; the one year requirement in subsection (e) is the applicable period, since no appeal is pending. *Lindly, et al. v. Malone*, Superior Court, 3rd Jud. Dist. 3AN-90-02586 CI (1990) (The 1991 amendment codified this decision.).

Subsection (d) does not violate the equal protection clause of the United States Constitution and/or the Alaska Constitution. *State v. Anthony*, 810 P.2d 155 (Alaska 1991).

Subsection (d), which makes incarcerated felons ineligible for permanent fund dividends, does not violate the ex post facto clause of either the United States or the Alaska Constitutions. *State v. Anthony*, 816 P.2d 1377 (Alaska 1991).

Denial of a permanent fund dividend to an incarcerated felon was not a separate punishment in addition to his sentence for murder for purposes of double jeopardy. *Hertz v. Storer*, 943 P.2d 725 (Alaska 1997).

The alien eligibility requirement of subparagraph (a)(5)(B) is constitutional because the department has the authority to interpret the statutory language in a manner that meets the purposes of the permanent fund dividend program and that comports with federal law. *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

No constitutional protection of permanent fund dividend. - Changes in the qualifying date for a permanent fund dividend (pfd) do not violate the constitutional rights of new residents. Plaintiffs, as new residents, had only an inchoate expectancy of a pfd which is not afforded constitutional protection. *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

Dividends received on behalf of minors. - Where a divorced mother borrowed money from her childrens' permanent fund dividends, it was not error on the part of the court to deny the former husband's request that the mother be ordered to repay the amount taken. *Hayes v. Hayes*, 922 P.2d 896 (Alaska 1996).

Construction with Federal Soldiers' and Sailors' Civil Relief Act. - Servicemember, who had been discharged from the Navy, was not eligible to claim a Permanent Fund Dividend (PFD) for a certain year where he failed to overcome presumption that he had not been a resident of Alaska for the last five years; servicemember's argument that the Federal Soldiers' and Sailors' Civil Relief Act preempted state law in that area was not persuasive, as that act applied to only two areas, taxation and voting, and PFD was not a tax but a benefit. *Eagle v. Dep't of Revenue*, 153 P.3d 976 (Alaska 2007).

Dividends properly withheld. - The state department of revenue properly withheld appellant's permanent fund dividends (PFDs) for 1992, 1993, and 1994 because the absences he reported from his primary Alaska residence exceeded the 180-day period allowed under former AS 43.23.005(a), 43.23.095(8), and their implementing regulations. *Schikora v. State*, 7 P.3d 938 (Alaska 2000).

Applied in *Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993); *State, Dep't of Revenue v. Wilder*, 929 P.2d 1280 (Alaska 1997).

Stated in *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985).

Cited in *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624 (9th Cir. 1989); *Lee v. Cox*, 790 P.2d 1359 (Alaska 1990); *Morgan v. Department of Revenue*, 813 P.2d 295 (Alaska 1991); *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992); *United States v. Pleier*, 849 F. Supp. 1321 (D. Alaska 1994).

Sec. 43.23.008. Allowable absences.

(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

(1) receiving secondary or postsecondary education on a full-time basis;

(2) receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state;

(3) serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent, an individual who is

(A) serving on active duty as a member of the armed forces of the United States; and

(B) eligible for a current year dividend;

(4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine;

(5) receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change;

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

(8) settling the estate of the individual's deceased parent, spouse, sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;

(9) serving as a member of the United States Congress;

(10) serving on the staff of a member from this state of the United States Congress;

(11) serving as an employee of the state in a field office or other location;

(12) accompanying a minor who is absent under (5) of this subsection;

(13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;

(14) serving as a volunteer in the federal peace corps program;

(15) because of training or competing as a member of the United States Olympic Team;

(16) participating for educational purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State;

(17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 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;

(B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (16) of this subsection but is claiming an absence under (1) or (2) of this subsection; or

(C) 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.

(b) An individual may not claim an allowable absence under (a)(1) - (16) of this section unless the individual was a resident of the state for at least six consecutive months immediately before leaving the state.

(c) An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (10) of this section.

(d) For purposes of (a)(7) of this section, "family member" means a person who is

(1) legally related to the individual through marriage or guardianship; or

(2) the individual's sibling, parent, grandparent, son, daughter, grandson, granddaughter, uncle, aunt, niece, nephew, or first cousin.

History -

(Sec. 5 ch 44 SLA 1998; am Sec. 1 ch 71 SLA 1999; am Sec. 1 ch 69 SLA 2003; am Sec. 1, 2 ch 116 SLA 2003; am Sec. 20, 21 ch 42 SLA 2006; am Sec. 1, 2 ch 36 SLA 2008)

Cross References -

For provisions extending to September 15, 2008, the date by which individuals who may qualify for a permanent fund dividend for 2006, 2007, and 2008 because of the 2008 addition of (a)(16) of this section may apply for the dividend, see Sec. 3, ch. 36, SLA 2008 in the 2008 Temporary and Special Acts.

Amendment Notes -

The 1999 amendment, effective January 1, 2000, added present paragraph (4), redesignated subsequent paragraphs accordingly, inserted internal references in paragraph (13), and made internal reference substitutions throughout.

The first 2003 amendment, effective June 12, 2003, in paragraph (a)(3) added the language beginning "or accompanying" to the end of the introductory language and added subparagraphs (A) and (B); updated paragraph references in paragraph (a)(13); and rewrote subparagraphs (a)(14)(A) and (B).

The second 2003 amendment, effective January 1, 2004, substituted "family member" for "parent, spouse, sibling, child, or stepchild" in paragraph (a)(7) and added subsection (d).

The 2006 amendment, effective May 26, 2006, added paragraphs (a)(14) and (a)(15), and made related changes.

The 2008 amendment, effective May 23, 2008, substituted "(16), or (17)" for "or (16)" in paragraph (a)(13), inserted paragraph (a)(16), and changed references to former paragraph (a)(15) to present paragraph (a)(16) four times in paragraph (a)(17) and once in subsection (b).

Editors Notes -

Section 35, ch. 42, SLA 2006, makes the 2006 amendments to subsections (a) and (b) of this section retroactive to January 1, 2006.

Section 4, ch. 36, SLA 2008 makes the 2008 amendments of (a) and (b) of this section retroactive to January 1, 2005.

Decisions -

Cited in *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

Construction with Federal Soldiers' and Sailors' Civil Relief Act. - Servicemember, who had been discharged from the Navy, was not eligible to claim a Permanent Fund Dividend (PFD) for a certain year where he failed to overcome presumption that he had not been a resident of Alaska for the last five years; servicemember's argument that the Federal Soldiers' and Sailors' Civil Relief Act preempted state law in that area was not persuasive, as that act applied to only two areas, taxation and voting, and PFD was not a tax but a benefit. *Eagle v. Dep't of Revenue*, 153 P.3d 976 (Alaska 2007).

Sec. 43.23.010. Eligibility for permanent fund dividend. [Repealed, Sec. 22 ch 102 SLA 1982].

Repealed or Renumbered

Sec. 43.23.011. Application period.

(a) An application for a permanent fund dividend shall be filed during the period that begins January 1 and ends March 31 of that dividend year.

(b) An otherwise eligible individual may apply for a current year dividend after March 31 of that year if the individual was eligible during the application period under (a) of this section for hostile fire or imminent danger pay while serving on active duty as a member of the armed forces of the United States. The individual must apply under this subsection within 90 days after the last day the individual was eligible for hostile fire or imminent danger pay. If the individual was eligible for hostile fire or imminent danger pay on March 31 of the current dividend year, the 90-day application period extension begins on the first day after March 31 that the individual was no longer eligible for the pay.

(c) The commissioner may permit an individual to apply for a permanent fund dividend for any year after the application deadline under (a) or (b) of this section if the individual

(1) at any time during the application period for that dividend established in (a) or (b) of this section,

(A) served on active duty as a member of the armed forces of the United States; and

(B) was eligible for hostile fire or imminent danger pay; and

(2) demonstrates a reasonable cause for the delay in applying for that dividend.

History -

(Sec. 9 ch 4 SLA 1992; am Sec. 1 ch 112 SLA 2004; am Sec. 22 ch 42 SLA 2006)

Cross References -

For provisions extending the deadlines for application for 2003 and 2004 dividends by individuals who were "eligible for hostile fire or imminent danger pay while serving in active duty as a member of the armed forces of the United States during the application period" for the respective dividends, see Sec. 2, ch. 112, SLA 2004, in the 2004 Temporary and Special Acts.

Amendment Notes -

The 2004 amendment, effective June 30, 2004, added subsections (b) and (c).

The 2006 amendment, effective July 1, 2006, substituted "January 1" for "January 2" in subsection (a).

Decisions -

Stated in *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

Sec. 43.23.015. Application and proof of eligibility.

(a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other information available from other state departments or agencies to determine the eligibility of an individual. The commissioner shall consider all relevant circumstances in determining the eligibility of an individual. However, the residency of an individual's spouse may not be the principal factor relied upon by the commissioner in determining the residency of the individual.

(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must include notice of the penalties provided for under AS 43.23.035 and contain a statement of eligibility and a certification of residency.

(c) Except as provided in (d) of this section or as may be provided by regulations adopted by the department, an individual must personally sign the application for permanent fund dividends, including the certification of residency required under (b) of this section.

(d) The application and certification of residency of an unemancipated individual under 18 years of age or of a disabled or an incompetent individual must be signed by the individual's parent, legal guardian, or other authorized representative. An individual may complete, sign, and file an application on behalf of a member of the armed forces of the United States who is serving on active duty outside of the United States if the individual has a power of attorney from the member of the armed forces that authorizes, in specific or general terms, the individual to file that application.

(e) If a public agency claims a permanent fund dividend on behalf of an individual, the public agency shall hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

(f) A minor or a disabled or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or disabled or incompetent individual.

(g) If an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may, upon payment of a \$25 appeal fee, request the department to review its decision. Within 12 months after the administrative appeal is filed, the department shall provide the

individual with a final written decision. If the individual is aggrieved by the decision of the department after all administrative proceedings, the individual may appeal that decision to the superior court in accordance with AS 44.62.560. An appeal to the court under this section does not entitle the aggrieved individual to a trial de novo. The appeal shall be based on the record of the administrative proceeding from which appeal is taken and the scope of appeal is limited to matters contained in the record of the administrative proceeding. If, as a result of an administrative proceeding or a court appeal, the individual prevails, the \$25 appeal fee shall be returned to the individual by the department.

(h) The penalty and enforcement provisions of AS 43.23.035 apply to an individual who claims a permanent fund dividend on behalf of another.

(i) An indigent individual may apply for a waiver of the appeal fee required under (g) of this section. The department shall prescribe and furnish a form for that purpose. The department shall grant the waiver if, during the year immediately preceding the year the form is submitted to the department, the individual was a member of a family with an income equal to or less than the federal poverty guidelines for Alaska set by the United States Department of Health and Human Services.

(j) The application form for claiming a permanent fund dividend must include a place for the applicant to voluntarily indicate that the applicant is a veteran, the branch of service, including the Alaska Territorial Guard, and the dates of service. Notwithstanding AS 43.23.017, the department shall release information provided under this subsection to the Department of Military and Veterans' Affairs and may not otherwise release the information. The Department of Military and Veterans' Affairs may only release the information to congressionally chartered veterans service organizations in the state. The application form must contain notice that providing the information under this subsection is voluntary, that the information will be released as provided in this subsection, and that the veterans service organizations are not required to keep it confidential.

History -

(Sec. 1 ch 102 SLA 1982; am Sec. 2 ch 159 SLA 1988; am Sec. 4 ch 107 SLA 1989; am Sec. 2, 3 ch 68 SLA 1990; am Sec. 47 ch 21 SLA 1991; am Sec. 2 ch 68 SLA 1991; am Sec. 10, 11 ch 4 SLA 1992; am Sec. 1, 2 ch 18 SLA 1996; am Sec. 1 ch 83 SLA 2005; am Sec. 1 ch 90 SLA 2008)

Amendment Notes -

The 2005 amendment, effective January 1, 2006, added the second sentence in subsection (d).

The 2008 amendment, effective September 11, 2008, added subsection (j).

Decisions -

Extension of filing time denied. - Department of revenue ruling that an extension of time for filing an application for a permanent fund dividend was not available because the information submitted in the original application was deceptive was reasonable and not arbitrary, where applicant submitted false residency verifications containing forged signatures. *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992).

Prohibiting permanent fund distribution to illegal aliens. - An administrative regulation, which restricted permanent fund dividend eligibility to aliens with resident alien or refugee status, fell within the delegated authority of the commissioner of revenue to regulate the eligibility of individuals for

permanent fund dividends. The regulation was also constitutional under the state and federal equal protection clauses. Limiting the distribution of dividends to those who are lawful permanent residents is rationally related to legitimate objectives of the dividend program. *Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Out-of-state students. - Regulation 15 AAC 23.175(c)(2) (now repealed) is consistent with subsection (a) because it defines "absent only for secondary or postsecondary education" and thereby resolves the question of who is a permanent resident qualified to receive a permanent fund dividend. The regulation is not arbitrary or unreasonable. Thus, an out-of-state part-time student was properly denied dividend. *State, Dep't of Revenue v. Bradley*, 896 P.2d 237 (Alaska 1995).

Military spouse. - In the case of a military spouse, although the former allowable absence requirement depended on the residency of her spouse, it was not accurate to characterize that requirement as "the principal factor" which determined her residency. *State, Dep't of Revenue v. Hale*, 978 P.2d 1276 (Alaska 1999).

Quoted in *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

Sec. 43.23.016. Voter registration.

The commissioner shall include, at the department's expense, voter registration forms prepared under AS 15.07.070(b) in the permanent fund dividend application packet. The forms must include a notice that an individual is not required to register to vote in order to be eligible to receive a permanent fund dividend. For purposes of maintaining accurate voter registration records, the commissioner shall provide the director of elections with the mailing addresses of all applicants for a permanent fund dividend.

History -

(Sec. 1 ch 48 SLA 1992; am Sec. 91 ch 82 SLA 2000)

Amendment Notes -

The 2000 amendment, effective July 1, 2000, inserted ", at the department's expense," and substituted "in the permanent fund dividend application packet" for "with permanent fund dividend applications" in the first sentence and added the second and third sentences.

Sec. 43.23.095. Definitions.

In this chapter,

(1) "Alaska permanent fund" means the fund established by art. IX, Sec. 15 of the state constitution;

(2) "disabled" means physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause; "disabled" does not mean "incompetent";

(3) "dividend fund" means the fund established by AS 43.23.045;

(4) "individual" means a natural person;

(5) "permanent fund dividend" means a right to receive a payment from the dividend fund;

(6) "qualifying year" means the year immediately preceding January 1 of the current dividend year;

(7) "state resident" means an individual who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055 or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of AS 01.10.055;

(8) "year" means a calendar year.

History -

(Sec. 1 ch 102 SLA 1982; am Sec. 3 ch 55 SLA 1983; am Sec. 6 ch 68 SLA 1990; am Sec. 38 ch 168 SLA 1990; am Sec. 16 ch 4 SLA 1992; am Sec. 2 ch 73 SLA 1996; am Sec. 7, 8 ch 44 SLA 1998)

Cross References -

For legislative findings and intent concerning the addition of (8)(H) - (J) by Sec. 2, ch. 73, SLA 1996, see Sec. 1, ch. 73, SLA 1996 in the Temporary and Special Acts.

Amendment Notes -

The 1998 amendment, effective January 1, 1999, rewrote paragraph (7) and added paragraph (6).

Decisions -

Equal protection. - Argument of claimant, denied permanent fund dividend because of absence from state for more than 180 days, that he was not provided the same benefits as members of groups who were absent for one of the (former) listed excusable absences, and as such his equal protection rights were violated, was without merit. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Petitioner's absence from the state for more than 180 days in a year for an "inexcusable" reason rendered him ineligible for permanent fund dividends (PFDs), even though he would have been eligible had he been a state employee, since the rules bore a fair and substantial relationship to the legitimate governmental objectives of promoting state residency, preventing fraud in the distribution of PFDs, and simplifying adjudication procedures. *Eldridge v. State*, 988 P.2d 101 (Alaska 1999).

Procedural due process. - Claimant who was ineligible for a permanent fund dividend as a matter of law because he was out of the state for more than 180 days, and whose absence did not fit into one of the (former) statutory or regulatory excusable absence categories, was not denied his procedural due process rights when his appeal was denied in a summary adjudication, since, in the

absence of a factual dispute, he was not entitled to an evidentiary hearing. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Substantive due process. - The statutory and regulatory scheme denying permanent fund dividend to claimant absent from the state for more than 180 days, whose absence did not fit one of the (former) excused categories, does not violate substantive due process. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Right of interstate travel. - The permanent fund dividend regulations and statutes are bona fide requirements which ensure that benefits provided for residents are enjoyed only by residents, and as such do not violate the constitutional right of interstate travel. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Defining permanent resident. - The legislature has given broad discretion to the commissioner to determine the factors which define a permanent resident. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Requirement of intent to return to state. - A serviceman who was absent more than five years failed to establish intent to return to the state where the evidence showed that he returned for a brief visit only once in a 12-year period, he maintained only motor vehicle registration, voter registration, driver's license and bar membership in Alaska, and he had not requested reassignment to Alaska. *State, Dep't of Revenue v. Wilder*, 929 P.2d 1280 (Alaska 1997).

Prohibiting permanent fund distribution to illegal aliens. - An administrative regulation, which restricted permanent fund dividend eligibility to aliens with resident alien or refugee status, fell within the delegated authority of the commissioner of revenue to regulate the eligibility of individuals for permanent fund dividends. The regulation was also constitutional under the state and federal equal protection clauses. Limiting the distribution of dividends to those who are lawful permanent residents is rationally related to legitimate objectives of the dividend program. *Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Validity of regulation. - Since the purpose of former paragraph (8) (now paragraph 7) is to ensure that permanent fund dividends are only given to permanent residents and a legitimate function of corresponding regulations is to ease the administrative burdens of determining eligibility, 15 AAC 23.163, requiring that absences do not exceed 180 days, is consistent with its statutory purpose. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Absence for medical treatment. - "Medical treatment", as defined in this section, does not mean merely an absence from the state on the advice of one's doctor, but implies some specific therapeutic application by medical personnel; thus, applicants who were outside Alaska for nearly two-thirds of the year-long eligibility period for the permanent fund dividend did not qualify for an allowable absence for medical treatment, although their medical treatment may have been medically advised. *Brodigan v. Alaska Dep't of Revenue*, 900 P.2d 728 (Alaska 1995).

A regulation, by allowing an absence for applicants receiving medical treatment if the absence "does not include a seasonal or permanent change of residence," assures that eligibility is limited to those residents who are temporarily outside actively attempting to treat their medical conditions, and is consistent with the language and purpose of this section. *Brodigan v. Alaska Dep't of Revenue*, 900 P.2d 728 (Alaska 1995).

Military spouse. - Since an absence for military service was allowable under the definition of "state resident" in AS 43.23.095 prior to its amendment effective January 1, 1999, and so was "accompanying an eligible individual as the spouse...of the eligible individual" under 15 AAC 23.163, a military spouse absent from the state was a resident because she met both the intent and the allowable absence requirements. *State, Dep't of Revenue v. Hale*, 978 P.2d 1276 (Alaska 1999).

Dividends properly withheld. - The state department of revenue properly withheld appellant's permanent fund dividends (PFDs) for 1992, 1993, and 1994 because the absences he reported from his primary Alaska residence exceeded the 180-day period allowed under former AS 43.23.005(a), 43.23.095(8), and their implementing regulations. *Schikora v. State*, 7 P.3d 938 (Alaska 2000).

Quoted in *State, Dep't of Revenue v. Gazaway*, 793 P.2d 1025 (Alaska 1990).

Cited in *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992).