

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MICHAEL S. ANDERSON,

Appellant,

vs.

STATE OF ALASKA, DEPARTMENT
OF REVENUE, PERMANENT FUND
DIVIDEND DIVISION,

Appellee.

Case No. 3AN-02-9983CI

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ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

MEMORANDUM OPINION AND JUDGMENT

This matter comes before the court on appeal from a final administrative determination by the Department of Revenue ("DOR"), Permanent Fund Division ("Division") to deny appellant's 2000 permanent fund dividend application. This appeal followed.

As a preliminary matter, on 09 April 2003, this court denied appellant's request to file a late-filed brief. The Department subsequently filed the brief of appellee. Because the issue appears to have been adequately briefed, the court hereby **VACATES** its order denying appellant's late-filed brief as improvidently entered, accepts the briefs as filed, and now proceeds to a decision on the merits.

The Superior Court has jurisdiction to hear and decide this appeal pursuant to AS 22.10.020(d) (Administrative Appeal), Alaska Rule of Appellate Procedure 601, and AS 44.62.560-570.

This court, having fully considered the arguments and record on appeal, hereby orders the decision of the Division is **AFFIRMED**. The appellant is not entitled to a permanent fund dividend for the year 2000.

I. STATEMENT OF FACTS

The relevant facts in this case are undisputed. Appellant Michael S. Anderson was denied a permanent fund dividend ("PFD") for the year 2000 because he was absent from Alaska for 220 days in 1999 while attempting to complete his master's degree at Western Washington University. For seventy three days in 1999, appellant was enrolled as a full-time student, completing his required classroom work in so doing. Still, he needed to complete and defend his master's thesis. So, for another 147 days that year, appellant worked on his thesis full-time and attended school part-time in Washington.

The time spent working on the thesis and attending school part-time did not qualify as an allowable post-secondary education absence under AS 43.23.008(a)(1); he would have needed to be enrolled as a full-time student for an allowable absence. 15 AAC 23.163(c)(1).

The Division denied appellant's PFD application on 18 June 2001. An informal appeal decision entered 07 November 2001 by PFD Technician Christina Strahm affirmed the Division's initial denial of appellant's application. Appellant again appealed, and the Department provided a formal review hearing on 09 April 2002. On 15 July 2002, Revenue Hearing Examiner Dale Whitney again affirmed the denial of appellant's PFD. The formal Permanent Fund Dividend Decision was the Department's final administrative decision for purposes of appeal to this court.

Appellant does not challenge the Division's reading, interpretation, nor implementation of the relevant statutes and regulations. Instead, he argues that his equal protection rights were violated because he was not provided the same benefits as members of groups who were absent for one of the listed allowable absences.

II. STANDARD OF REVIEW

AS 44.62.570 governs this appeal. However, the court "will not substitute its judgment for that of the agency with respect to the efficacy of a regulation nor review the 'wisdom of a particular regulation.'" *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1127 (Alaska 1999) (internal citations omitted).

Issues of law not involving agency expertise, including constitutional claims and statutory interpretation, are reviewed *de novo* under a "substitution of judgment" standard. See

Department of Pub. Safety v. Shakespeare, 4 P.3d 322, 324 (Alaska 2000); see also *Barcott v. Department of Pub. Safety*, 741 P.2d 226, 228 (Alaska 1987) (internal citations omitted). Under this standard, the reviewing court will substitute its own judgment for the agency's, using the rule of law that is most persuasive in light of precedent, reason, and policy.

III. ANALYSIS

A. *Did the Division's decision to deny appellant's 2000 Permanent Fund Dividend violate his right to equal protection under the law?*

Appellant argues that his right to equal protection under the law was violated because his application for a PFD was denied. Because he was absent from Alaska for 220 days in 1999, and because his absence was not excusable under the relevant statutes and regulations, the Division was required to deny his PFD application. Unless the regulation is invalid, the 2000 PFD was properly denied.

Neither AS 43.23.095(8) nor 15 AAC 23.163(c) violates the equal protection clause of the Alaska Constitution. See *Church*, 973 P.2d at 1130-31. See also *Eldridge v. State, Dep't of Revenue*, 988 P.2d 101, 103 (Alaska 1999). An equal protection claim concerning the denial of a PFD, which is an economic interest, is entitled to only minimum protection under Alaska's equal protection analysis. See *State, Dep't of Revenue v.*

Cosio, 858 P.2d 621, 629 (Alaska 1993) (internal citations omitted).

Under the minimum scrutiny rubric, the state need only demonstrate that the regulation was "designed to achieve a legitimate governmental objective, and that the means bear a 'fair and substantial' relationship to the accomplishment of that objective." See *Church*, 973 P.2d at 1130 (citing *Underwood v. State*, 881 P.2d 322, 325 (Alaska 1994)).

Here, appellant argues that the challenged statutes and regulations are flawed and biased against thesis-based master's degree students because they fail to recognize out-of-classroom work done by thesis-based students as acceptable absences for purposes of PFD distribution. Appellant highlights as evidence for his equal protection claim the regulatory protections for non-thesis-based masters' degree students, students attending professional, technical, and specialty schools, and persons finishing the requirements for a medical doctor degree through an internship or residency.

The statutes and regulations challenged by plaintiff in this case are intended to "ensure that only permanent residents receive dividends." *Church*, 973 P.2d at 1130. The goal is legitimate, especially in light of the fact that the permanent fund dividend program seeks to: 1.) provide a means of equitable distribution of a portion of Alaska's wealth to the people of

Alaska; 2.) encourage people to maintain their residence in Alaska, and reduce Alaska's population turnover; and 3.) encourage awareness and involvement by Alaska residents of the management and expenditure of the permanent fund. See *Cosio*, 858 P.2d at 627.

As the *Eldridge* court stated:

While the regulation as applied under the facts of this case may seem harsh, there is a fair and substantial relationship generally between the regulation and the State's legitimate interests in promoting Alaska residency, preventing fraud in the distribution of PFDs, and simplifying its adjudication procedures. There is not a perfect fit between means and ends, as this case probably demonstrates, but there need not be a perfect fit for the regulation to pass the relatively low constitutional test applied when the individual's interest is economic.

Eldridge, 988 P.2d at 104.

Harsh though it may be, the distinction drawn between the different types of students outlined by appellant bears a fair and substantial relationship to the permanent fund dividend program's legitimate objectives. As such, the Division's decision to deny appellant's 2000 PDF is hereby

AFFIRMED.

DATED at Anchorage, Alaska this 25th day of July, 2003.

I certify that on 7/28/03 a copy of the above was mailed to each of the following at their addresses of record:

D. Branch
M. Anderson Pro Per

[Signature]
Administrative Assistant

[Signature]
PETER A. MICHALSKI
Superior Court Judge