

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

In the Matter of:	)	
	)	
M. N. T. and	)	
N. A. T., JR.	)	
	)	OAH No. 06-0715-PFD
<u>2005 Permanent Fund Dividend</u>	)	Agency No. 05597930_9

**DECISION AND ORDER**

**I. Introduction**

M. N. T. and N. A. T., Jr., both minor dependents of an active-duty member of the armed forces, timely applied for and were paid 2005 permanent fund dividends (PFDs). On February 17, 2006 the Permanent Fund Dividend Division denied and assessed the two dividends. The basis for demanding repayment was the division's view that the children ceased being Alaska residents in early 2005, before applying for the dividend, because of a decision to move the dependents to Florida while the armed forces member completed a remote tour in Korea.<sup>1</sup> After the division held to this position in an informal appeal, the children's parents requested a formal hearing.

The hearing took place on November 29, 2006, with both parents attending and testifying in person. The division's denial is reversed because the evidence at the hearing showed that (1) the T.s were Alaska residents on an allowable absence in the qualifying year for the 2005 dividend; (2) the T.s retained Alaska residency through the date of their application for the 2005 dividend and thereafter; and (3) although the T.s knew when they applied that the children would be embarking on an absence not covered by the military dependent provision of the PFD law, the intent to take that absence was not disqualifying. The absence was shorter than 180 days and was allowable under AS 43.23.008(a)(16)(A).<sup>2</sup>

**II. Facts**

Unless otherwise attributed, the facts set out below are based on the testimony of Sergeant and Mrs. T., the children's parents, at the hearing.

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<sup>1</sup> Ex. 4 (denial and assessment letters).

<sup>2</sup> Precisely speaking, the Ts' case is governed by AS 43.23.008 as it existed in 2005, prior to a 2006 amendment that renumbered the paragraphs of subsection (a) but made no substantive changes to the paragraphs at issue in this decision. To avoid confusion, the citations in the text are to the new numbering of paragraph (a). The subparagraph actually being applied is *former* AS 43.23.008(a)(14)(A) (2004).

The T. family established Alaska residency in 1998. Sgt. T. was transferred to Sheppard Air Force Base in Texas in 2002 while on active military duty, and the family moved there until 2005.

In October of 2004, Sgt. T. received orders for a remote tour in Korea.<sup>3</sup> Remote tours (also known as dependent-restricted tours)<sup>4</sup> are assignments on which the service member's dependents do not physically accompany the service member. It is standard practice to receive a "follow-on assignment" before going on a remote tour. Sgt. T. requested Alaska as a follow-on assignment, but his request was denied. He was given a follow-on assignment to No Name, Idaho. The T.s continued to hope for an Alaska assignment and continued to "work the Air Force system," in Mrs. T.'s words, to try to bring that about.

Sgt. T. left Texas for Korea on January 4, 2005. Initially, his family planned to stay in the vicinity of Sheppard Air Force Base until the remote tour was completed, and then to accompany him to his follow-on posting. In February of 2005, the T.s concluded that this arrangement was too expensive because they had to maintain two households, and they made plans for Mrs. T. and the children to go to Florida to stay with her family there for part or all of his absence. At the time, their hope was that an Alaska posting would be arranged and that the dependents could move to Alaska before winter.

On March 15, 2005, Sgt. T. applied for 2005 PFDs on behalf of his two children. At the time he applied, he frankly admits that he knew that his dependents would be traveling to Florida.

In late March of 2005, after the application had been submitted, Mrs. T. and the children traveled to Florida. They left their household goods in storage in Texas. Mrs. T. accepted a three-month temporary job with the Department of Defense in Florida.

Immediately after the relocation, the follow-on assignment to No Name was canceled. Sgt. T. continued to work actively to arrange an Alaska posting. In September of 2005, with informal assurances that an Alaska posting would indeed be granted, Mrs. T. moved herself and the children to Alaska at her own expense.

The exact time of the travel to Florida and onward to Alaska was not established at the hearing because none of the participants identified these as important dates. Based on the record as it exists, it is more likely than not that the period between the departure from Texas in late March and the arrival in Alaska in September was slightly less than 180 days.

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<sup>3</sup> Ex. 3, p. 2 (Request and Authorization for Permanent Change of Station).

<sup>4</sup> See DOD Directive 1327.5 at 28, definition E2.1.12 (1985) (available at [www.dtic.mil/whs/directives](http://www.dtic.mil/whs/directives)).

In October of 2005 Sgt. T. received orders to Alaska. Since returning here, he and the family have purchased a house.

While in Texas, Florida, and Korea, Sgt. and Mrs. T. retained their Alaska driver's licenses and Alaska voter registration. There is no evidence that they took steps to establish residency in any other state. Notably, they never moved their household furnishings to Florida.

### **III. Discussion**

This case relates to the 2005 PFD. It is undisputed that in 2004, the qualifying year for the 2005 PFD, the T. children were Alaska residents on an allowable absence to accompany a dividend-eligible, active-duty member of the armed forces of the United States.<sup>5</sup> The case focuses on the status of the children at the time of application, on March 15, 2005. An applicant must be an Alaska resident on the date of application.<sup>6</sup>

The PFD division's concern regarding the T. children revolves in part around an unofficial statutory interpretation relating to military dependents whose qualifying military member is sent on a remote tour, that is, a tour on which dependents are not allowed. The statute providing for allowable absences permits military dependents to remain eligible for dividends while outside Alaska "accompanying" their dividend-eligible military spouse or parent.<sup>7</sup> A difficult area in the administration of this statute has been the circumstance—increasingly common since the Afghanistan and Iraq operations began—where the dependents "accompany" the soldier to an outside location, the soldier is subsequently redeployed a second time to a remote posting, and, by necessity, the soldier leaves the dependents behind. The division's interpretation of the statute has been that these dependents are still "accompanying" the soldier if they either remain at the duty station from which he or she departed or they move to the designated follow-on duty station to await his or her return.<sup>8</sup> Under this interpretation, the T. children were "accompanying" Sgt. T. as long as they stayed near Sheppard Air Force Base in Texas, but were not "accompanying" Sgt. T. when they went to Florida to stay with Mrs. T.'s parents from March to September, 2005.

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<sup>5</sup> The absence is made allowable by AS 43.23.008(a)(3).

<sup>6</sup> AS 43.23.005(a)(3).

<sup>7</sup> See AS 43.23.008(a)(3).

<sup>8</sup> The division has stated this interpretation at Ex. 9, p. 4. At the hearing, the division noted that the dependents can also continue to receive dividends if they return to Alaska during the remote assignment.

The division's interpretation is accepted in this decision insofar as it governs the application of the statute to the T. dependents' stay in Texas, at Sgt. T.'s pre-deployment duty station, between January and March, 2005. As will be seen, it is not necessary to this decision to determine the reasonableness of this statutory interpretation in any other factual context.

The second necessary component of the division's concern is the regulation at 15 AAC 23.143(h), which provides:

An individual who on the date of application knows the individual will be moving from Alaska as a specific time to a specific destination for a reason other than one allowed by AS 43.23.008(a) [the list of allowable absences] does not have the intent to remain indefinitely in Alaska and is not eligible for a dividend.

The division notes that when the T. children's applications were filed, the parents knew that Mrs. T. and the children would be going to Florida, a step that, under the interpretation of AS 43.23.008(a)(3) explained above, would take them outside the scope of the allowable absence for military dependents.

The evidence taken at the hearing showed that, for at least two reasons, the travel to Florida that was planned prior to the date of application did not disqualify these children under the quoted regulation. First, the regulation the division seeks to apply speaks of "moving" to another location. The T. dependents did not "move" to Florida. They left their household goods in Texas and went to Florida temporarily to stay with family for financial reasons. There is no evidence that they ever had the intent to remain in Florida or to establish a home there. Second, the regulation only applies if the intended absence is not allowable. The absence in Florida was indeed one "allowed by AS 43.23.008(a)." Under subparagraph (a)(16)(A) of that statute, a person claiming an absence under paragraph (a)(3) to accompany a military member—as the division agrees that the T. dependents were between January and March of 2005—can, *in addition*, take an absence not exceeding 180 days "for any reason consistent with the individual's intent to remain a state resident." The T. children's stay in Florida was under 180 days, and it was a temporary visit consistent with their parents' continuing intent to return to and remain in Alaska.

Since 15 AAC 23.143(h) does not apply to sever the children's residency or disqualify them from a dividend, the reasoning underlying the assessment of these dividends fails. The division's concerns, though reasonable when they arose, should be allayed by the more complete factual background developed at the hearing.

#### **IV. Conclusion**

The payment of 2005 dividends to the T. children was appropriate, and the T. family should not be required to repay them.

**V. Order**

IT IS HEREBY ORDERED that the assessments of previously-paid 2005 permanent fund dividends to M. N. T. and N. A. T., Jr. be ABATED.

DATED this 4<sup>th</sup> day of December, 2006.

By: Signed  
Christopher Kennedy  
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 and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29<sup>th</sup> day of December, 2006.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]