

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

In the Matter of:)	
)	
E T and minor children)	
A and S T)	OAH No. 12-0107-PFD
)	Agency Nos. 2011-045-9270
)	2011-063-8886
)	2011-063-8887
<u>2011 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

E T submitted applications for 2011 Permanent Fund Dividends (PFD) for herself and her two children.¹ The Permanent Fund Dividend Division (division) denied Ms. T's application because she had been absent from Alaska for 235 days during the 2010 qualifying year.² The children's applications were denied because they did not have an eligible sponsor.³ The division did not change its position during the informal appeal process, and Ms. T requested a formal hearing.⁴

A hearing was held on June 4, 2012. Ms. T represented herself and the division was represented by PFD Specialist Peter Scott. The record was left open for one week to allow the division to submit additional evidence. Based on the evidence in the record, the division correctly denied the PFD applications for Ms. T and her children.

II. Facts

The relevant facts are not in dispute.⁵ Ms. T is a long-term Alaska resident. During 2010 she and her children were living out of state accompanying K T, who was her husband at the time and who is an active duty service member. The couple separated and in early September 2010, Ms. T and her children returned to Alaska. The couple's divorce became final in November of 2011.

¹ Exhibit 1.
² Exhibit 3, page 1.
³ Exhibit 3, pages 5 and 7.
⁴ Exhibit 7.
⁵ The factual findings are based on Ms. T's testimony unless otherwise noted.

During 2010, Ms. T was absent from January 1 through July 19, for a total of 200 days, and absent again from July 31 through September 4, for an additional 35 days.⁶ The children's absences were for slightly different dates,⁷ but the difference is not relevant for purposes of this decision. Since at least 2004, Ms. T has always intended to return to Alaska after her husband's military service concluded. Since their separation, she has in fact returned and intends to remain in Alaska indefinitely.

K T applied for PFDs in previous years, but did not apply for a 2011 PFD.⁸

III. Discussion

In order to be eligible to receive a PFD, an applicant must meet seven different eligibility requirements.⁹ In this case, the division determined that Ms. T was absent from the state beyond the number of days allowed and also that she was not a state resident during the entire qualifying year.

A. Absence from State

To be eligible for a PFD, an applicant must be "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[.]"¹⁰ The applicable allowable absences in this case are set out in subsections .008(a)(3) and .008(a)(17):

- (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[.¹¹]

and

- (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

⁶ Exhibit 1, page 4

⁷ Exhibit 1, pages 8 and 14.

⁸ Affidavit of Peter Scott.

⁹ AS 43.23.005(a). In addition, minor children must have an eligible sponsor. 15 AAC 23.113(b).

¹⁰ AS 43.23.005(a)(6).

¹¹ AS 43.23.008(a)(3).

claiming an absence under (1), (2), or (4) – (16) of this subsection[.^{12]}

Ms. T was absent from Alaska for more than 180 days during 2010. Thus, she was unallowably absent unless her absence qualifies as a military service absence under AS 43.23.008(a)(3).¹³ During 2010, she was out of state accompanying K T who was serving on active duty in the United States armed forces. K T had been eligible for previous PFDs.¹⁴ If he had been eligible for a 2011 PFD, then Ms. T would have met the requirements for this absence. Unfortunately, K was not eligible for a 2011 PFD because he did not apply for one. Application for a PFD is the first of the seven requirements for eligibility.¹⁵

At least through May of 2011, K T listed Alaska in his employment records as his state of residency.¹⁶ Thus, he may well have remained an Alaska resident during all of the 2010 qualifying year, and throughout the application period for the 2011 PFD.¹⁷ Had he submitted an application, Ms. T and her children would likely all have been eligible to receive a 2011 PFD. Although K T's decision not to apply for a PFD was beyond Ms. T's control, she is still impacted by that decision. Because he is not eligible to receive a PFD, Ms. T does not qualify as an accompanying spouse of an eligible service member and is not eligible to receive a PFD. Because she is not eligible, her children do not have an eligible sponsor and they are also not eligible for a PFD.¹⁸

B. Residency

The division also determined that Ms. T was no longer an Alaska resident. Residency is based in part on an individual's intent.

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

* * *

¹² AS 43.23.008(a)(17).

¹³ There is no other potentially applicable allowable absence in this matter.

¹⁴ Exhibit 2; Affidavit of Peter Scott.

¹⁵ AS 43.23.005(a)(1).

¹⁶ Exhibit 4, page 3.

¹⁷ See AS 43.23.005(a)(2) and (3) (requirements that one be a state resident on date of application and during qualifying year).

¹⁸ Whether K T did remain an Alaska resident during all of 2010 and during the beginning of 2011 is unknown. If he did remain a resident, however, then the children may wish to apply for the 2011 PFD after they turn 18 and before reaching age 20. 15 AAC 23.133(b) and (c). No ruling is made here as to whether they would be eligible at that time.

(c) A person who establishes residency in the state remains a resident during absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.^[19]

The division determined that because Ms. T had a principal home in New York, she was no longer a resident of Alaska.²⁰ Absent other disqualifying actions, active duty military members and their accompanying spouses may maintain a principal home in another state without becoming ineligible to receive a PFD.²¹ As discussed above, however, Ms. T did not qualify for an allowable absence as an accompanying spouse. Because she maintained a principal home in another state, Ms. T was ineligible to receive a 2011 PFD for this additional reason.²²

Eligibility is not the same as residency, however.²³ Maintaining a home in another state is evidence that the individual does not intend to return and remain in Alaska indefinitely, but it is not conclusive proof. This is especially true under the circumstances of this case. Ms. T had been maintaining her Alaska residency for several years while accompanying her military spouse. Because her husband was an active duty service member, it was completely appropriate for them to have a principal home outside of Alaska. Ms. T had no reason to know that her former husband would not apply for a PFD. If he had applied, she likely would have remained eligible for a PFD herself. In this situation, maintaining a home outside of Alaska is not an indication that Ms. T intended to abandon her Alaska residency. That she immediately returned to Alaska after her marriage deteriorated provides additional support for her claim that she always did intend to return. Ms. T did not lose her Alaska residency at any time during 2010.

IV. Conclusion

The division correctly denied Ms. T's application for a 2011 PFD because she was unallowably absent from Alaska during the qualifying year. Because they did not have an eligible sponsor, the division also correctly denied the children's applications. The Permanent Fund Dividend Division's denial of the applications is **AFFIRMED**.

¹⁹ AS 01.10.055.

²⁰ Exhibit 6, page 1.

²¹ 15 AAC 23.143(d)(1).

²² *Id.*

²³ 15 AAC 23.143(d)(1) states that, with some exceptions, a person who maintains a principal home in another state is ineligible, but this regulation does not make any statement concerning residency. *Cf.* 15 AAC 23.163(f) (presumption of lack of intent to return to Alaska after five years of absence).

Dated this 8th day of June, 2012.

Signed

Jeffrey A. Friedman

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of July, 2012.

By: *Signed*

Signature

Christopher Kennedy

Name

Administrative Law Judge

Title

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