

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

IN THE MATTER OF)	
U L. C)	OAH No. 12-0997-PFD
)	Agency No. 2012-046-5306
<u>2012 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

U L. C applied for a 2012 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Ms. C was not eligible, and it denied her application initially and at the informal appeal level. Ms. C requested a formal hearing.

Administrative Law Judge Mark T. Handley was appointed to review and decide Ms. C's appeal. The hearing was held on January 15, 2013. Ms. C participated. Bethany Thorsteinson represented the Division and filed a position paper.

The administrative law judge concludes that Ms. C is not eligible for a 2012 PFD because she was absent from Alaska for more than 180 days to accompany her spouse, who was not eligible for a 2012 PFD.

II. Facts

Ms. C was a resident of Alaska and was married a member of the U.S. Armed Forces. Unfortunately, Ms. C's husband did not qualify for a 2012 PFD, because he did not apply.¹ At the hearing, Ms. C admitted that she left Alaska in December of 2010, to accompany her husband, whose duty station was changed to Germany by the military.² Ms. C was outside of Alaska for all of 2011.

III. Discussion

The Division determined that Ms. C was not eligible for a 2012 PFD because she was absent from Alaska for a disqualifying reason, and had maintained her principal home outside Alaska in 2011.³ At the hearing, Ms. C was originally confused about which year she left Alaska and asserted that she was absent for less than 180 days in 2011, but after she reviewed her travel documentation she admitted that she left in December of 2010 and was gone all of 2011. Ms. C explained that she believes she should be eligible because her husband would have been eligible if he applied for a 2012 PFD, and because she has maintained her Alaska residency while she was on

¹ Exhibit 1, p. 3.
² Exhibit 5, p. 3 & Ex. 6, p. 4.
³ Exhibit 6, p. 1.

what she thought was an allowable absence. Ms. C, as the person challenging the Division’s action, has the burden of proving that the Division is in error.⁴

Disqualifying Absence

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or must only have been absent for one of the reasons listed in AS 43.23.008.⁵ One of the provisions of that list allows an Alaskan to be absent for up to 180 days for any reason consistent with Alaska residency without disqualification.⁶ Because Ms. C was absent from Alaska for more than 180 days in 2011, the 180-day allowable absence for general reasons available to all residents does not apply to this case.

Under this list of absences that do not disqualify an Alaskan is one for “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.”⁷ Because Ms. C was absent from Alaska to accompany a spouse who was not eligible for a 2012 PFD this absence reason does not apply to this case either. Even though her husband was serving on active duty as a member of the armed forces of the United States during his absence, Ms. C husband was not eligible for a 2012 PFD because he did not apply before the filing deadline.⁸

As someone who was absent as the spouse of someone serving on active duty as a member of the armed forces of the United States, who was an ineligible Alaska resident, Ms. C could not be absent for more than 180 days in 2011 to accompany him and be eligible for a 2012 PFD. The law is clear that the exception to the rule requiring physical presence in Alaska is only available to those accompanying active-duty members of the armed forces who are eligible for a 2012 PFD. As an individual who was not eligible for a 2012 PFD because he missed the deadline for filing an application, Ms. C’s husband does not fall within this category, and Ms. C was absent for more than 180 days in 2011 to accompany him.

Principal Home

15 AAC 23.143(d)(1) provides that an otherwise eligible applicant is disqualified if, at any time from the beginning of the qualifying year through the date the application is complete, the

⁴ 15 AAC 05.030(h).
⁵ AS 43.23.005(a)(6).
⁶ AS 43.23.008(a)(17)(A).
⁷ AS 43.23.008(a)(3).
⁸ AS 43.23.011(a).

applicant has “maintained the individual’s principal home in another state,” except while absent for specified reasons, such as attending college or accompanying and eligible resident who is serving in the military.⁹ Ms. C was not on an allowable absence for accompanying an eligible resident who is serving in the military in 2011. Ms. C is therefore disqualified for the 2012 dividend because she maintained her principal home in Germany in 2011 PFD.

IV. Conclusion

Ms. C did not requirements for an allowable absence. Because Ms. C’s husband is ineligible for a 2012 PFD despite his active duty service, Ms. C is also disqualified due to her having maintained her primary home outside Alaska during her absence. The application of U L. C for a 2012 permanent fund dividend was correctly denied.

DATED this 17th day of January, 2013.

By: Signed
Mark T. Handley
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 26th day of February, 2013.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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

⁹ See 15 AAC 23.143(d)(1)(A), (B).