

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

IN THE MATTER OF)	
)	
K & U D and)	
A, B, C, E, &)	OAH No. 13-1429-PFD
F D (minor children))	Agency Nos. 2011-066-5126 &
)	2011-044-0015
<u>2011 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

U D completed and filed the D family’s 2011 permanent fund dividend (PFD) applications online. All seven 2011 applications were approved, and each family member received a 2011 PFD. Information supplied on their 2012 PFD applications caused the division to question whether the family had received the 2011 PFD in error. Further review revealed that K and U D were ineligible for a 2011 PFD because they claimed a deduction for moving expenses on their 2010 and 2011 Federal income tax returns. Because the parents were ineligible, the children were ineligible. The division sought to recover the 2011 PFDs paid in error; this appeal followed.

Claiming moving expenses on a Federal tax return during the qualifying year is a disqualifying act. It is an objective test. The D family was ineligible for the 2011 PFD, so the division may seek assessment for purposes of repayment.

II. Facts

For purposes of this decision a lengthy recitation of the facts is not necessary. In November 2010, Mr. and Ms. D loaded up their family in a RV and traveled to Mr. D’s brother’s home on the East Coast. In 2011, the family again loaded up their RV and traveled to the West Coast, where Mr. D obtained employment. They returned to Alaska in 2012.

Mr. and Ms. D filed joint Federal income tax returns.¹ On their 2010 Federal income tax return, Mr. and Ms. D claimed moving expenses totaling \$8,870.² On their 2011 Federal income tax return, they claimed moving expenses totaling \$6,900.³

Mr. D testified that they have an accountant do their taxes. Mr. D testified that he recalled the accountant asking about traveling, not moving, expenses. He did not know he was claiming

¹ Ex. 20.
² *Id.* at p. 13.
³ *Id.* at p. 5.

moving expenses on his Federal tax return. The Ds have not sought to amend their 2010 or 2011 income tax returns.

III. Discussion

This decision addresses not only Mr. and Ms. D’s eligibility for the 2011 PFD, but also their children’s eligibility. The children must have an eligible sponsor.⁴ Because their parents are their proper sponsors, if Mr. and Ms. D are ineligible, then, in this instance, so are their children.⁵

In some cases, eligibility for a PFD may be a subjective inquiry that depends on the circumstances. In other cases, PFD eligibility is objective, and turns on strict rules that must be applied without regard to a person’s subjective intent or circumstances.

This case turns on an objective rule. Under the rules, a person is not eligible for a PFD if the person has (i) moved from Alaska for a reason other than one listed in statute, and (ii) claimed moving expenses during the qualifying year as a deduction on the individual’s federal income tax return.⁶ While an objective rule, the Department of Revenue saw fit to provide an applicant with a “cure.” An applicant who has claimed moving expenses as a deduction may reverse the action by providing proof of filing an amended tax return deleting the claimed moving expense deduction.⁷

Mr. D attempted to establish that he did not know he had claimed moving expenses on his federal tax return. When asked if Mr. D would like to call his accountant as a witness, he declined. A commonly applied principle is that “where relevant evidence which would properly be part of a case is within the control of a party whose interests it would naturally be to produce it and he fails to do so, the only inference which the finder of fact may draw is that such evidence would be unfavorable to him.”⁸ The failure to present their accountant’s testimony is further evidence of an ineligible objective act. Intent is not relevant.

A 2009 case on PFD eligibility, *In re M. & B. C.*, makes clear that the rule on moving and moving expenses is “absolute.”⁹ Upon weighing the facts, Mr. and Ms. D have not established that when they left Alaska, it was for one of the reasons allowed by statute.¹⁰ It is undisputed that they claimed a deduction for moving expenses on their 2010 federal tax return, and 2010 is the

⁴ 15 AAC 23.113(b).

⁵ There are limited exceptions to this rule, none of which are applicable here. *Id.*

⁶ 15 AAC 23.143(d)(10).

⁷ 15 AAC 143(d)(10)(B).

⁸ *Henderson v. Tyrrell*, 910 P.2d 522, 532 (Wash. App. 1996); *see also, e.g., Sweet v. Sisters of Providence*, 895 P.2d 484 (Alaska 1995).

⁹ *In re M. & B. C.*, OAH No. 09-0618-PFD at 4 (Commissioner of Revenue 2009).

¹⁰ For example, Mr. D did not leave to go to school, serve in the military, or work for a member of Congress. *See* AS 43.23.008(a)(1) – (3), (9) – (11), (16).

qualifying year for the 2011 dividend. Therefore, under 15 AAC 23.143(d)(10), Mr. and Ms. D are ineligible for the 2011 PFD.¹¹ Because they are ineligible, the children do not have an eligible sponsor.

IV. Conclusion

Mr. and Ms. D and their five children left Alaska in 2010 and claimed moving expenses on their 2010 federal tax return. Claiming moving expenses on a Federal income tax return without subsequently amending the filing will render the people claiming the deduction, such as Mr. and Ms. D, ineligible for a PFD. Because the children do not have an eligible sponsor, their 2011 PFDs are denied as well. The division’s decision denying the family’s 2011 applications are affirmed and the division may assess the improperly paid dividends.

DATED this 28th day of January, 2014.

Signed

Rebecca L. Pauli
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 24th day of February, 2014.

By: *Signed*

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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

¹¹ Because this appeal is decided under 15 AAC 23.143(d)(10), it is not necessary to consider the Division’s other grounds for denying the D’s PFD applications.