

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

In the Matter of)	
)	
A X, B X,)	OAH No. 14-1716-PFD
C X (minor child))	Agency Nos. 2014-025-9465
& D X (minor child))	2014-025-9351
)	2014-028-1536
)	2014-028-1639

DECISION AND ORDER

I. Introduction

A and B X applied for 2014 Permanent Fund Dividends (PFDs) for themselves and for their minor children, C and D X.¹ The Permanent Fund Dividend Division (Division) denied A and B's applications for a number of reasons, including that they had moved out of state for employment purposes during calendar year 2013, they had claimed related moving expenses on their 2013 federal tax return, they were maintaining their principal home outside of Alaska, and they did not demonstrate the requisite intent to return to Alaska and remain here indefinitely.² Their children's applications were denied for the same reasons, and because they did not have an eligible sponsor.³

The Xs appealed these denials. The Division denied their informal appeals, and the Xs filed formal appeals which were referred to this office. A formal hearing was held on November 10, 2014. Mr. and Mrs. X appeared telephonically and represented themselves. The Division was represented by PFD Specialist Peter Scott.

In a formal hearing in an appeal of a PFD denial, the party who filed the appeal has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁴ Thus, the Xs have the burden of proof in this case. Because there is no dispute that the facts cited by the Division as the basis for the denials are correct and accurate, and that these facts render the Xs ineligible for PFDs, the Division's denials of their 2014 PFD applications are affirmed.

¹ Exhibit 1.

² Exhibit 2.

³ *Id.* A X acted as the minor children's sponsor on their PFD applications.

⁴ 15 AAC 05.030(h).

II. Facts

Mr. and Mrs. X became residents of Alaska in late 1996, and they resided in No Name until July 7, 2013, when they moved to No Name, California.⁵ The Xs did not dispute any of the Division’s factual allegations at the hearing. In their testimony, they confirmed their statements in their 2014 PFD applications that they moved to California because Mrs. X got a job there.⁶ They did not dispute that this job is permanent, full-time employment for Mrs. X. At the hearing they also confirmed their statements in their 2014 PFD applications that they did not intend to return to Alaska, other than to visit. In their electronic PFD applications, they each checked the box marked “yes” for “absent from AK today,” and they checked the box marked “no” for “returning to AK.” In the section marked “returning to AK explanation,” they each added explanatory language to the effect that “Alaska is too cold and too expensive to live and too expensive to travel to and from.”⁷ At the hearing, the Xs also confirmed that they had claimed moving expenses from their move to California on their 2013 federal income tax return. In addition, they did not dispute that their home in California has been their principal home since they moved there in July, 2013. Nor did they dispute that their two minor children accompanied them to California at that time.

III. Discussion

The Division found the Xs ineligible for the 2014 PFD because, during the qualifying year of 2013 they moved from Alaska for employment purposes;⁸ they claimed moving expenses related to that move on their 2013 federal tax return;⁹ they did not demonstrate the requisite intent to return to Alaska and remain here indefinitely;¹⁰ and they were maintaining their principal home outside of Alaska.¹¹ Each of these factors provides an independent basis for finding a PFD applicant ineligible, pursuant to pertinent Alaska statutes and regulations.

In the informal appeal process, the Division upheld each of the denials for the same reasons. The Xs did not dispute the accuracy of the factual foundation for each of these determinations by the Division. Nor did the Xs argue that the Division misinterpreted or misapplied the statutes and regulations that it cited in denying their PFDs.

⁵ Unless otherwise noted, the factual discussion in this decision is based on Mr. and Mrs. X’s testimony.

⁶ *See, e.g.* Exh. 1, p. 3.

⁷ Exh. 1, pp. 2, 8.

⁸ *See* 15 AAC 23.143(d)(4).

⁹ *See* 15 AAC 23.143(d)(10).

¹⁰ *See* AS 01.10.055(c); AS 43.23.095(7).

¹¹ *See* 15 AAC 23.143(d)(1).

Instead, the Xs contended at the hearing that they should receive their 2014 PFDs because they were present in Alaska for more than 180 days during the qualifying year,¹² and they still held Alaska drivers licenses, registered their vehicles here and were registered to vote here throughout 2013. These arguments, however, are based on a misunderstanding of the structure of the statutes and regulations governing PFD eligibility. The “180 day” rule is actually a disqualifier, which states that an absence of more than 180 days in a qualifying year disqualifies someone who otherwise meets the definition of an Alaska resident (unless the absence falls under the limited category of allowable absences listed in AS 43.23.008).¹³ Thus, the fact that the Xs were absent for less than 180 days in 2013 is irrelevant if they did not meet the basis requirements of residency. Similarly, maintenance of Alaska driver’s licenses, voter registrations and vehicle registrations can serve to help establish residency for a person initially establishing residence in Alaska or a person who has been absent but asserts an intention to live in Alaska permanently, but it provides no help to a person who has moved from the state and does not intend to return.

The Xs also argued that it is fundamentally unfair to deny them the PFDs because they lived in No Name for over 16 years, served in the military, shoveled snow, suffered through extreme cold, and generally “did their time” or “paid their dues” in Alaska. The PFD statutes and regulations, however, provide no discretion to the Division or the administrative law judge to find a person eligible based on considerations of fairness or equity or on perceptions that a person has “earned” the right to receive a PFD. The statutes and regulations provide specific guidance regarding the factors to be applied in determining PFD eligibility. Moving out of Alaska for the purpose of a full-time, permanent job in another state,¹⁴ claiming moving expenses related to an out-of-state move on a federal tax return,¹⁵ maintaining one’s principal home outside of Alaska,¹⁶ and failing to demonstrate an intent to return to Alaska and remain here indefinitely,¹⁷ are all specifically defined factors that cause a person to be ineligible for a PFD. The Division correctly applied these factors to the Xs’ PFD applications and to their informal appeals.

¹² In fact, it appears the Xs were present in Alaska for 188 days during 2013, before they moved to California, and they were absent for the balance of the year, 177 days.

¹³ AS 43.23.008(a)(17).

¹⁴ See 15 AAC 23.143(d)(4).

¹⁵ See 15 AAC 23.143(d)(10).

¹⁶ See 15 AAC 23.143(d)(1).

¹⁷ See AS 01.10.055(c); AS 43.23.095(7).

As to the claims of the Xs' minor children, A X acted as their sponsor on their applications. Because she is ineligible for the 2014 PFD, their applications were properly denied for lack of an eligible sponsor. Their applications were also properly denied for the same reasons discussed above relating to their parents' claims.

IV. Conclusion

Because the Xs moved out state for employment purposes during the qualifying year, claimed related moving expenses on their 2013 federal tax return, maintained their principal home outside of Alaska, and did not demonstrate any intent to return to Alaska and remain here indefinitely, the Xs' 2014 PFD applications were properly denied. The Division's denial of their informal appeals is hereby affirmed.

DATED this 20th day of March, 2015.

By: Signed
Andrew M Lebo
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 17th day of April, 2015.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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