

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

IN THE MATTER OF)	
S T)	OAH No. 14-2102-PFD
& K X)	Agency No. 2014-041-8387
<u>2014 Permanent Fund Dividend</u>)	& 2014-028-5254

DECISION & ORDER

I. Introduction

S T and K X applied for 2014 permanent fund dividends (PFDs). The Permanent Fund Dividend Division (Division) determined that both Mr. T and Ms. X were not eligible, and it denied their applications initially and at the informal appeal level. Mr. T and Ms. X requested a formal hearing.

Administrative Law Judge Andrew Hemenway was appointed to review and decide the appeals of Mr. T and Ms. X. The hearing was held on January 9, 2015. Mr. T and Ms. X participated. Bethany Thorsteinson represented the Division and filed a position paper. The record closed on March 9, 2015. The appeal was reassigned to Administrative Law Judge Mark T. Handley, who reviewed the record, listened to the recording of the hearing and issued this decision.

The administrative law judge concludes that Mr. T and Ms. X are not eligible for 2014 PFDs, because they were on disqualifying absences from Alaska in 2013, and because Mr. T was not an Alaska resident for all of 2013.

II. Facts

Mr. T was a resident of Alaska in 2011 who qualified for a 2012 PFD. He applied for a 2013 PFD, but the Division denied his application and he did not appeal. At the hearing, Mr. T explained that he and Ms. X moved to Arizona in 2012 to live with Ms. X's parents while they both went to college. He paid nonresident tuition and worked at the local Walmart. In March of 2013, Mr. T joined the military; he returned to Alaska for a short visit. Mr. T was absent for almost all of 2013, the 2014 PFD qualifying year. Mr. T's Leave and Earning Statements in 2013 showed Arizona as his state of legal residence.

At the hearing, Ms. X explained that she left Alaska in 2012 to live with her parents and go to school to become a Pharmacist technician. Ms. X was able to pay the military tuition rate while she was in school in Arizona because her father was in the military. After Mr. T completed basic

training in 2013, Mr. T and Ms. X were married and moved to Texas, where Mr. T was stationed. In December of 2014 they moved back to Alaska.¹

III. Discussion

The Division determined that Mr. T and Ms. X were not eligible for 2014 PFDs because they were on disqualifying absences from Alaska in 2013. Mr. T and Ms. X had still not provided all the documentation that the Division had requested prior to the hearing. The record was held open so that Mr. T could provide documentation of his full-time student status and tuition residency status in Arizona, as well as his Arizona tax filing status and his residency status on his military personnel records. After the hearing, Mr. T did file documentation showing that he was a halftime student at Pima College in 2013, but this record did not show whether he paid resident or nonresident tuition. Mr. T also filed an amended Arizona 2013 Income Tax Return indicating that he was an Alaska resident, instead of an Arizona resident as he had originally claimed on his first return. Mr. T also filed a 2014 military Leave and Earning Statement showing Alaska as his state of legal residence.

Mr. T, as the person challenging the Division's action, has the burden of proving that the Division is in error.² Mr. T did not show the Division's determination that he was ineligible was incorrect.

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 43.23.008.³ 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.⁴ Alaska Statute 43.23.008 disqualifies individuals absent more than 120 days in addition to absences for the full-time educational reasons, or 45 days in addition to absences for unlisted reasons if absent more than 180 days cumulatively during the PFD qualifying year.

Because Mr. T was absent from Alaska for more than 180 days in 2013, the 180-day allowable absence for general reasons available to all Alaskans does not apply to this case. Mr. T was absent more than 120 days in 2013 when he was not absent for full-time education and more than 45-days when he was not a full-time student and not in the military.

¹ Recording of Hearing.

² 15 AAC 05.030(h).

³ AS 43.23.005(a)(6).

⁴ AS 43.23.008(a)

Furthermore, the evidence shows that Mr. T's absence from Alaska in 2012 and 2013 was not consistent with the intent to remain an Alaska resident. While he was absent, he was only enrolled in school half-time. He worked in Arizona and filed an Arizona resident income tax return. He claimed that Arizona was his state of legal residence on his military employment records. While he later took steps to attempt to change his military state of legal residence and filed an amended tax return, the evidence shows that Mr. T moved to Arizona in 2012, and began to establish residency in that state. Ms. X was absent more than 180 days in 2013 to accompany her nonresident spouse on his military tour in Texas. The eligibility rules for a PFD are very strict for those who are on extended absences from Alaska. Many Alaskans lose eligibility for extended absence that are for very good reasons, but are disqualifying. Neither Ms. X nor Mr. T are eligible for 2014 PFDs.

IV. Conclusion

Mr. T did not meet the requirements for an allowable absence. The applications of S T and K X for 2014 permanent fund dividends were correctly denied.

DATED this 26th day of June, 2015.

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 31st day of July, 2015.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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