

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

In the Matter of

D J

)
)
)
)

OAH No. 15-0737-PFD
Agency No. 2014-033-0853/0921

DECISION

I. INTRODUCTION

D J and his minor daughter B applied for a 2014 Permanent Fund Dividend (PFD). Their applications were denied by the Permanent Fund Dividend Division (Division). Mr. J' application was denied because the Division found that he had not met the minimum physical stay requirement during the past five years. The minor daughter's application was denied due to her not having an eligible sponsor and because she also was found not to have spent the mandatory minimum amount of time in the State during the qualifying year. Mr. J completed the informal appeal process for himself and his daughter and then requested a formal hearing.

A formal hearing by telephone was held on August 12, 2015. Mr. J represented himself and his daughter. The Division was represented by PFD specialist Pete Scott. The record closed at the end of the hearing.

Based on the evidence in the record, the Division's decision to deny Mr. J' and his minor daughter's applications is upheld. Even though Mr. J was unable to return to Alaska in 2013 due to his military service, he was still disqualified from 2014 PFD eligibility because he did not return to Alaska for a total of 30 or more days during the five calendar years preceding 2014, namely 2009 through 2013. Because he was the sponsor for his minor daughter, his disqualification resulted in her disqualification.

II. FACTS

Mr. J moved to Alaska as a young child. He attended college out of state and then left Alaska in 2007 to join the military. Since May of 2007, he has only been able to return to Alaska on three occasions. He was present in Alaska from December 22, 2008 to January 4, 2009, a period of 13 days, four of which were in 2009. He was also present December 24, 2010 to December 31, 2010, a period of seven days, and from November 28, 2012 to December 5, 2012, a period of seven days. His total time in the state since 2008 is 27, of which 18 were on or after

January 1, 2009.¹ He was not able to return to Alaska at all during 2013, having been deployed to Afghanistan and then stationed in Germany. His minor daughter has only been in Alaska at the same time as her father.²

III. DISCUSSION

Eligibility for a PFD is dependent on several factors, the primary ones being that an applicant must be an Alaska resident and must be physically present in the state for a minimum period during the qualifying year, which is the calendar year immediately preceding the year of the application. These minimum stay rules are relaxed for active duty military personnel such as Mr. J. However, active duty military personnel are still subject to the statutory presumption that a person is no longer an Alaska resident if he “has been absent from the state for more than 180 days in each of the five preceding qualifying years.”³ Mr. J has been absent from the state for more than 180 days during each of the five preceding qualifying years, specifically 2009 through 2013. He is therefore presumed to no longer be an Alaska resident for PFD eligibility purposes. Mr. J, however, by statute, has the ability to rebut the statutory presumption that he is a non-resident. In order to rebut the presumption, he must show two things: first, that he “was physically present in the state in the state for at least 30 cumulative days during the past five years” **and** second, that he is a state resident, as defined by statute.⁴

The facts of this case, as discussed above, show that Mr. J has only been physically in the state a total of 18 days in the applicable five years from 2009 through 2013: four days in 2009, seven days in 2010, and seven days in 2012. Because Mr. J, in order to rebut the presumption that he is no longer a state resident for PFD eligibility purposes, must show the required 30 days of physical presence, he is legally unable to rebut the presumption that he is no longer a resident for PFD eligibility purposes, regardless of whether he is a state resident for other purposes.

Mr. J made two arguments that he should be considered eligible for the 2014 PFD, despite his presumed lack of residency for PFD purposes. The first was that he was present in the state for 72 hours in 2012. Alaska statute AS 42.23.005 provides, in part, that a person is eligible for the PFD *if he or she is a state resident* on the date of the application and has been

¹ Ex. 4, p. 1; Ex 12, p. 1. The day a person returns to the state is not counted. The day a person leaves the state is counted. 15 AAC 23.163(j).

² Mr. J’ testimony.

³ AS 43.23.008(a) and (d).

⁴ AS 43.23.008(d)(1) and (2).

physically in the state for at least 72 hours in the two years prior to the applicable dividend year.⁵ However, as explained above, Mr. J is no longer considered a state resident for PFD eligibility purposes, because he was not physically present in the state a minimum of 30 cumulative days during 2009 through 2013. As a result, he is not eligible under the 72 hour rule.

Mr. J' second argument was that the legislative intent behind HB 52 (Alaska Legislature 2013) was to protect military personnel's eligibility for the PFD. However, the legislative history for AS 43.23.008 actually supports the conclusion that Mr. J is no longer a resident for PFD eligibility purposes. AS 43.23.008 was amended in 2013 to remove the blanket prohibition, formerly contained in AS 43.23.008(c), which barred persons who had been absent from the state "for more than 180 days in each of the related 10 qualifying years" from receiving a PFD unless they had been absent from the state for 180 days or less during the applicable qualifying year. Instead the legislature inserted language, previously contained in regulation, which created the rebuttable presumption of non-residency described above. As the January 29, 2013 legislative committee hearing minutes show, the more flexible "five year" rule replaced the more restrictive 10 year rule.⁶

Mr. J is therefore not eligible for the 2014 PFD because he failed to rebut the presumption that he is no longer a state resident for PFD eligibility purposes. Mr. J was the sponsor for his minor daughter's PFD application. However, a minor must have an eligible sponsor, subject to certain limited exceptions, none of which pertain here.⁷ Because Mr. J was not an eligible sponsor, his minor daughter is similarly not eligible for a 2014 PFD. It should also be noted that because Ms. J has only been in Alaska in her father's company, she is also presumed to not be an Alaska resident due to her inability to satisfy the minimum physical presence requirement of 30 cumulative days during the requisite five year period.

IV. CONCLUSION

Because Mr. J was not present in the state for a minimum of 30 cumulative days during

⁵ AS 43.23.005(a)(2) and (4).

⁶ See Mr. Paschall's testimony (House State Affairs Standing Committee Minutes, January 29, 2013), which is located online at <http://www.legis.state.ak.us/pdf/28/M/HSTA2013-01-290804.PDF>

⁷ 15 AAC 23.113(b). The exceptions are for a sponsor who would have otherwise been eligible if he or she had not filed timely, or who was ineligible due to a felony conviction or incarceration, or who had forfeited dividends under AS 43.23.035.

the five year period from 2009 to 2013, neither he nor his minor daughter was eligible for the 2014 PFD. The Division's determination that they are not eligible is AFFIRMED.

Dated this 9th day of September, 2015.

By: Signed
Lawrence A. Pederson
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 October, 2015.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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