

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

In the Matter of:)	
)	
H & B Q)	
and their children)	
L, J & H Jr.)	OAH No. 15-1082-PFD
)	Agency No. 2014-057-
<u>2014 Permanent Fund Dividends</u>)	2630/6186/6246/6273/6317

DECISION

I. Introduction

H and B Q filed 2014 Permanent Fund Dividend (PFD) applications for themselves and their children, L, J and H Jr. The Alaska Permanent Fund Dividend (Division) denied those applications. Mr. Q requested an Informal Appeal. The denial was upheld. Mr. Q then requested a formal hearing.

The hearing was held on September 25, 2015. H Q appeared by phone. Mr. Q testified on his family’s behalf. Pete Scott, a PFD specialist employed by the Division, also appeared telephonically. He represented the Division and filed a position paper.

This decision upholds the Division’s denial of the respective 2014 PFD applications for H and B Q and their children because Mr. Q did not spend 30 days in Alaska over the preceding five years. As a result, Mr. Q could not rebut the statutory presumption that he is no longer a state resident. The 2014 PFD eligibility the other members of Mr. Q’s family was dependent on his eligibility because they were living outside Alaska to accompany him. They are also disqualified.

The primary issue in dispute in this case was the Division’s application of a regulation to count the days of Mr. Q’s presence in Alaska to determine whether he was in Alaska for 30 days in Alaska over the preceding five years. This decision concludes that the Division correctly applied that regulation.

II. Facts

The facts in this case are not in dispute.¹ H Q became an Alaska resident in 1988 when he moved to Alaska with his parents as a child.² H Q married B Q, another Alaska resident. In 1999, the Qs moved to Washington, so that Mr. Q could attend college. In 2000, Mr. Q joined the military. In 2005, the Qs moved back to Alaska while Mr. Q did a tour of duty here. However,

¹ Recording of Hearing.
² Exhibit 2, pages 2 & 6.

the Qs did not file for PFDs between 2000 and 2006. The Qs started to apply for and receive PFDs again in 2007. The Qs moved out of Alaska in 2008 because Mr. Q was transferred to Louisiana. The Qs have been living outside Alaska while Mr. Q was active duty military since September of 2008.³

Mr. Q has only been present in Alaska during the following dates over the past five years, that is, 2009-2013: August 13, 2013 to August 20, 2013, June 29, 2012 to July 11, 2012, and November 20, 2010 to November 30, 2010. If the day of arrival for each of these returns is not counted, Mr. Q spent 29 days in Alaska during the preceding five years. Other members of the Q family returned for more than 30 days during the preceding five years, but they were all absent more than 180 days, living outside Alaska to accompany him.⁴

III. Discussion

If H Q's 2014 PFD was correctly denied then B Q and their children were also correctly denied 2014 PFDs. 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. Q and the children were absent from Alaska for more than 180 days in 2013, 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. Q and the children were absent from Alaska to accompany Mr. Q, if he was not eligible for a 2014 PFD this absence reason does not apply either. Even though Mr. Q was serving on active duty as a member of the armed forces of the United States during his absence, Ms. Q and the children are disqualified if Mr. Q was not eligible for a 2014 PFD because

³ Exhibit 2, pages 2 & 6.

⁴ Exhibit 5, page 2. The day a person arrives in Alaska is not counted unless the person previously left Alaska that same day. *See* 15 AAC 23.163(j). Mr. Q confirmed that these dates were correct at the hearing.

⁵ AS 43.23.005(a)(6).

⁶ AS 43.23.008(a)(17)(A).

⁷ AS 43.23.008(a)(3).

he did not return for 30 days in the past five years.⁸ 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 2014 PFD.

Ms. Q and the children's 2014 PFD eligibility is therefore dependent upon the validity of Mr. Q's 2014 PFD eligibility. Unfortunately, Mr. Q did not show that he was eligible to receive a 2014 PFD. Under AS 43.23.008(d), the department will presume that an individual who has been absent from the state for more than 180 days in each of the five preceding qualifying years is no longer a state resident.⁹ Mr. Q admitted to facts that show he was not physically present in Alaska for at least 30 cumulative days from 2009-2013, the past five calendar years.¹⁰

The day a person arrives in Alaska is not counted unless the person previously left Alaska that same day.¹¹ Mr. Q argued that it is unfair to apply the regulation that does not include the day of arrival in counting days present in Alaska because he did not have notice of this rule and planned his returns accordingly. He argues that the day of arrival should apply and his returns should therefore be counted as a total of 31 days instead of 29.

This PFD eligibility regulation, 15 AAC 23.163(j), requires the Division to "count whole days when determining the number of days an individual was absent from Alaska." The regulation also specifically provides that the department must "count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day." The day the individual leaves Alaska does not count as a day absent. The regulation makes no exception for those who do not receive notice of how the Division is required to calculate the days an applicant is present in Alaska for the purpose of determining eligibility.

It is uncontested that that if this regulation is that Mr. Q does not meet the first statutory requirement of AS 42.23.008(d). Both he and the Division agree that he was physically present in Alaska for only 29 days during the five years preceding his 2014 PFD application if the date of arrival is not counted.¹²

IV. Conclusion

Because Mr. Q was absent for more than five years and did not return for more than 30 days in 2009-2013, the past five calendar years, he is not eligible for the 2014 PFD. As a result, B, Q and their children, L, J and H Jr., are also not eligible for the 2014 PFD.

⁸ AS 43.23.011(a).

⁹ AS 43.23.008.

¹⁰ AS 43.23.008(d).

¹¹ 15 AAC 23.163(j).

¹² Recording of Hearing.

The decision of the Permanent Fund Dividend Division to deny the application of the Q household for 2014 Permanent Fund Dividends is AFFIRMED.

DATED: September 28, 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of October, 2015.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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