

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

In the Matter of)	
)	
K & N U,)	OAH No. 16-1041-PFD
F, Q AND B)	Agency No. 2016-010-3250
U (MINORS))	
_____)	

DECISION AND ORDER

I. Introduction

This case is the appeal of K and N U and their children, F, Q and B (Mr. U and his family).

Mr. U and his family timely applied for the 2016 Permanent Fund Dividend (PFD). Their applications were denied by the Permanent Fund Dividend Division (Division) primarily because they had moved from Alaska before their 2016 PFD applications were filed. Mr. U and his family requested an informal appeal and were again denied. Mr. U and his family then requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal. The hearing was held on October 10, 2016. Mr. U and Ms. U appeared by telephone. PFD specialist Pete Scott represented the Division by telephone and filed a position statement and exhibits of the agency record. The hearing was audio recorded. The record in this appeal closed at the end of the hearing.

Having reviewed that record, and after due deliberation, the Administrative Law Judge concludes that Mr. U and his family do not qualify for a 2016 dividend, because they did not meet their burden of proof to show that they had not decided to move from Alaska permanently in 2015 or before the date of application for the 2016 PFD.

II. Facts

There is no real dispute regarding the relevant facts in this case.¹ Mr. U qualified for the 1997 through 2015 PFDs.² Ms. U qualified for the 1983 through 2015 PFDs.³

Mr. U and his family began to take steps to move from Alaska in 2015. In 2015, Mr. U began to transfer his job with his Alaska employer from Alaska to Minnesota after being informed that he had to either accept a severance package or a transfer to a job based outside of

¹ Recording of Hearing.
² Exhibit 1.
³ Exhibit 1.

the state. Employer-provided moving assistance, including help with the sale of their Alaska home, was conditioned on Mr. U's commitment to remain in the new job for at least one year.⁴

Mr. U and his family filed their 2016 PFD applications electronically on January 12, 2016. Mr. U and his family gave the address of their employer-provided home in Minnesota as their mailing address on the applications.⁵

At the hearing, Mr. U did not dispute the Division's finding that the family had decided to move before they applied for their 2016 PFDs. Mr. U explained that the company he had worked for in Alaska for the past 18 years had shut down the refinery where he worked. He was able to stay on an additional three years, but was finally informed that he would need to transfer to Minnesota if he wanted to remain employed with that company. Mr. and Ms. U looked at houses in Minnesota. They transferred their Alaska home to the company that would help them sell it on July 20, 2016. Ms. U continued to live in their Alaska home through late December of 2015, when their Alaska home was sold. In September of 2015, Mr. U moved to the employer-provided housing in Minnesota, but made frequent trips back to Alaska through the end of 2015.⁶

Mr. U explained that when they applied for the 2016 PFDs, they still had property in Alaska, Ms. U's parents still lived in Alaska, and the family still intends to move back to Alaska when they get a chance. Mr. U and his family are still living in Minnesota and he has no definite plans to end his current employment there.⁷

Mr. U filed a part-year resident 2015 Minnesota income tax return indicating that he was a resident of Minnesota for part of 2015. Mr. U explained that his employer's policy was that employees should pay state income tax in the state where they are employed after two weeks of employment in that state.⁸

Mr. U argued that he, Ms. U, and their family should be eligible despite their planned move to Minnesota because they were residents of Alaska for all of 2015 and still plan to return to Alaska at some time in the future.⁹

Based on the evidence in the record, I find that Mr. U did not show that it was more likely than not that the Division's findings – that he and his family knew they would be moving from Alaska to Minnesota to live there without any plans to move back to Alaska before the end

⁴ Recording of Hearing.

⁵ Exhibit 1.

⁶ Recording of Hearing & Exhibit 6.

⁷ Recording of Hearing.

⁸ Recording of Hearing & Exhibit 4.

⁹ Recording of Hearing.

of 2015, and that they moved from Alaska before the date that they filed their 2016 PFD applications¹⁰ – were incorrect.

III. Discussion

To qualify for the 2016 PFD, an applicant must meet the eligibility requirements during all of 2015, the qualifying year for the 2016 PFD, and through the date of application. As applied to Mr. U and his family's applications, that means they must have been Alaska residents through January 3, 2016, the date of the application, as well as during all of 2015.¹¹ PFD applicants who have definite plans to move out of Alaska on the date of their application are disqualified.¹²

Mr. U and his family's appeal appear to be based on their view that they were Alaska residents of all of 2015. Residency in Alaska during the PFD qualifying year is not the only eligibility requirement for a PFD. Additionally, the eligibility requirements for a PFD are not limited to those that relate to physical presence in Alaska during the qualifying year. As noted above, one of the many additional requirements is that the applicant not have definite plans to move away from Alaska on the date of application. Since the application period does not begin until January 2nd of the year after the PFD qualifying year, an applicant's state residency status during the PFD qualifying period is not the only factor in determining the PFD applicant's eligibility. Other additional requirements include not claiming residency in another state, for example, by filing a part-year resident tax return or accepting full-time employment in another state prior to the date of application.¹³

In a formal hearing in an appeal of a PFD denial, the individuals who filed the appeal, in this case, Mr. U and his family, have the burden of proving by a preponderance of the evidence that the denial is incorrect.¹⁴ Mr. U and his family did not show by a preponderance of the evidence that the Division was incorrect. The evidence in the record shows that the Division was correct in finding that Mr. U and his family knew they would be moving from Alaska to Minnesota to live there without any definite plans to move back to Alaska before they applied for PFDs in 2015, and had moved by the time they applied.

Mr. U was a very credible witness at the hearing. He was very frank and honest, and did not challenge the Division's position in regard to the facts. Mr. U was concerned about the

¹⁰ Exhibits 1, 4 & 6, Recording of Hearing.

¹¹ Alaska Statute 43.23.005(a).

¹² 15 AAC 23.143(h).

¹³ See 15 AAC 23.143(d).

¹⁴ 15 AAC 05.030(h).

Division's interpretation of the law as it applied to his situation. The Division correctly applied the law in this case. The law regarding PFD eligibility is strict, technical, and has changed over the time during which the PFD program has been in effect. For example, the legislature has added the requirement that Alaska residency extend through the date of application.

While the Division was concerned about the honesty of some of Mr. U's answers on the application, it appears that he attempted to answer those questions correctly. For example, he admitted on the application that he was applying from outside the state, that his job had taken him out of state, and that he was not returning to Alaska. Mr. U may have answered the questions on tax returns and his principle home in a way that concerned the Division because of the timing of filing the return and the temporary nature of his housing when he applied for the PFD, but they do not prove he was attempting to deceive the Division.

IV. Conclusion

Mr. U and his family failed to show by a preponderance of the evidence that they did not plan to move from Alaska on the date of application. The Division's decision is upheld. Mr. U and his family are not eligible to receive 2016 PFDs.

DATED this 11th day of October, 2016.

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 10th day of November, 2016.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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