

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

In the Matter of)	
)	
S K)	OAH No. 17-0514-PFD
_____)	Agency No. 2016-051-9325

DECISION

I. INTRODUCTION

S K filed for the 2016 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied her application for several reasons. She was found not to have spent the mandatory minimum amount of time in the State during the qualifying year. In addition, although her spouse was military, which could potentially make her eligible, she did not qualify because he is not himself eligible. Ms. K completed the informal appeal process, during which she was denied, and then requested a formal hearing.¹

This case was scheduled for a hearing by correspondence. The Notice of Hearing By Correspondence sent to Ms. K on May 11, 2017 indicated that Ms. K had until June 12, 2017 to submit documents or explanation to the Administrative Law Judge. Ms. K did not do so. Further, she did not submit anything in response to the Division's June 9, 2017 filing. The record closed on June 26, 2017, the last date for the parties to submit written filings.

Based on the evidence in the record, the Division's decision to deny Ms. K's application is upheld. Ms. K did not spend the requisite amount of time in Alaska during 2015, the qualifying year for the 2016 PFD. She also did not qualify for the exception for the spouses of active duty members of the armed forces, because her husband is not eligible for the 2016 PFD.

II. FACTS

Ms. K received PFDs from 1983 to 1993, from 1994 through 1998, and from 2007 through 2009. Her application for the 2010 PFD was denied and she did not file an application for PFD years 2011 through 2015.²

Ms. K filed an application for the 2016 PFD on March 18, 2016. In her application, she stated that she left Alaska in mid-April 2007, returned in 2014 for eight days (4/15/2014 –

¹ Ms. K also filed applications for her minor children. Those applications were also denied. However, Ms. K only requested an informal appeal, a prerequisite for a formal appeal, for herself. See 15 AAC 05.010(h). She did not request an informal appeal for her children's applications. Accordingly, this case only involves her application.

² Ex. 8.

4/23/2014), returned in 2015 for nine days (3/30/2015 – 4/8/2015), and has been in Alaska continuously since January 8, 2016.³

Ms. K’s husband is military. However, Ms. K returned to Alaska without him, due to his medical issues, and he did not file an application for the 2016 PFD.⁴ Ms. K is former military, having retired in 2013.⁵

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. If an applicant is absent for more than 180 days during the qualifying year, then the general rule is that the applicant is not eligible for the PFD.⁶ It is undisputed that Ms. K was absent from Alaska for substantially more than 180 days during calendar year 2015, the qualifying year for the 2016 PFD. Based upon the general rule, Ms. K is not eligible for the 2016 PFD.

As with any general rule, there are exceptions and nuances, depending upon the reason for the absence. Ms. K’s potential ground for eligibility is the exception allowed for the spouse of an active duty member of the armed forces.⁷ That exception requires that the spouse be eligible for the PFD.⁸ However, Ms. K’s husband did not file for the 2016 PFD, and the record does not show that he is eligible for the PFD. For instance, active duty military personnel are 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.”⁹ The limited evidence in this case shows that Ms. K, and presumably her husband, has been absent from the state for more than 180 days during each of the five preceding qualifying years, specifically 2011 through 2015. Ms. K’s husband is therefore presumed to no longer be an

³ Ex. 1, p. 2. Ms. K’s bank statements show a slightly different time frame for 2015, from March 26 – April 6. *See* Ex. 3, pp. 4 – 5.

⁴ Ex. 5, pp. 2 – 3.

⁵ Ex. 7, p. 11.

⁶ AS 43.23.008(a)(17)(A).

⁷ *See* AS 43.23.008(a)(3). While there is an exception for a person receiving continuous medical treatment (AS 43.23.008(a)(5)), that exception would not apply to Ms. K, because as noted in her comments, her multiple neurosurgeries were during 2009 – 2012 (Ex. 5, p. 4), several years before 2015, the qualifying year for the 2016 PFD.

⁸ AS 43.23.008(a)(3)(B).

⁹ AS 43.23.008(a) and (d).

Alaska resident for PFD eligibility purposes. However, Ms. K could rebut the statutory presumption of non-eligibility, by showing two things: first, that her husband “was physically present 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.¹⁰

The facts of this case, as discussed above, and as shown by Ms. K’s application, do not show that her husband was in Alaska for a total of 30 days in 2011 through 2015. Although, her written remarks refer to a house hunting trip of unspecified duration in 2011, she does not mention that fact on her application.¹¹ The application only shows a total of 17 days in Alaska during the relevant time period. Ms. K’s written comments state that her husband “gave up his residency 25 Jan 2016.”¹² This meant that he was not a resident as of March 18, 2016, the date of Ms. K’s application. As a result, Ms. K has not shown that her husband was eligible for the 2016 PFD.

IV. CONCLUSION

Because Ms. K was absent from the state for more than 180 days in 2015, she is not independently eligible for the 2016 PFD. Nor is she eligible on the basis that she was the spouse of an eligible member of the armed forces. The Division’s determination that she is not eligible for the 2016 PFD is **AFFIRMED**.

Dated this 8th day of August, 2017.

By Signed _____
Lawrence A. Pederson
Administrative Law Judge

¹⁰ AS 43.23.008(d)(1) and (2).

¹¹ Ex. 1, p. 2; Ex. 5, p. 3.

¹² Ex. 5, p. 3.

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 September, 2017.

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

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