

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

In the Matter of	)	
	)	
W G, L & M G (MINORS)	)	OAH No. 17-0769-PFD
_____	)	Agency No. 2017-012-6193

**DECISION**

**I. Introduction**

The G family—W G and his two minor daughters, L and M—left Alaska in 2011 when Mr. G was assigned to military duty outside the state. They continued to consider Alaska their state of residence, and because their reason for being absent from Alaska was allowable, they remained eligible for a permanent fund dividend through 2016. During the five years before 2017, however, the G family visited Alaska for only 15 days, thus failing to rebut the presumption they are no longer Alaska residents. Although Mr. G claims that information he received from the Permanent Fund Dividend Division induced him to postpone a trip he was planning to make to Alaska in 2016 until 2017, the division did not give Mr. G incorrect information, and thus the division is not equitably estopped from applying the 5-year rule to the G family’s PFD applications. Accordingly, the division’s denial is affirmed.

**II. Facts**

W G is an active duty member of the U.S. Air Force.<sup>1</sup> He and his two daughters, L and M, lived in Alaska for almost three years before leaving on June 3, 2011 for another duty station.<sup>2</sup> He is currently stationed in Louisiana.<sup>3</sup>

Mr. G and his daughters were eligible to receive permanent fund dividends for 2010 through 2016. In 2017, however the G family had been gone from Alaska for more than five years, and qualifying for the dividend became much more difficult for them. As required by statute, the division takes a much closer look at continued residency after a five-year absence.

On January 22, 2016, Mr. G sent the division an email asking whether he and his daughters needed to be physically present in Alaska for 30 days total over a 5-year period.<sup>4</sup>

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<sup>1</sup> Ex. 5 at 3.  
<sup>2</sup> Ex. 5 at 3.  
<sup>3</sup> Ex. 5 at 3.

He explained that he and his daughters left Alaska in 2011 and returned to Alaska in 2013 and 2015 to meet the “72-hour rule” but that they have not been in Alaska for a total of 30 days.<sup>5</sup> He asked whether he and his daughters needed to be in Alaska “for the remainder of the 30-day total in 2016,” and if so, how many days they needed to be in Alaska in 2016.<sup>6</sup>

A division PFD Eligibility & Public Response employee, Marissa, responded:

Next year (2017) you will have to have returned for a total of 30 days in a 5 year period. As of right now you have returned 226 days. However next year (2017) the year of 2011 when you didn’t depart until June (211 days in Alaska) we won’t be able to use. So then you will be sitting at 15 days from a 10 day return in 2013 and a 5 day return in 2015. You will need to return for at least 15 more days before the 2017 PFD.<sup>7</sup>

On January 15, 2017, Mr. G applied electronically for the family’s 2017 PFDs.<sup>8</sup> On his applications, Mr. G listed that he lived in Alaska for 180 days before departing Alaska for military service.<sup>9</sup> As of December 31, 2016, Mr. G had been absent from Alaska for about five and half years.<sup>10</sup> He and his family did not return to Alaska in 2016.<sup>11</sup>

Before denying the applications, the division confirmed that Mr. G lived in Alaska for almost three years before leaving Alaska on June 3, 2011 for military service.<sup>12</sup> The division verified from prior year travel records that Mr. G was present in Alaska for only 15 days during the 2012 through 2016 qualifying years: from March 29, 2013 until April 8, 2013 (10 days) and from November 18, 2015 through November 23, 2015 (5 days).<sup>13</sup> The division denied Mr. G’s application, reasoning that he did not overcome the presumption that he was no longer a resident because he was not present in Alaska for at least 30 cumulative days during the 2012 to 2016 qualifying years.<sup>14</sup> The division denied L and M’s applications because they did not have an eligible sponsor for the 2017 PFD.<sup>15</sup>

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4 Ex. 2 at 1.

5 Ex. 2 at 1.

6 Ex. 2 at 1.

7 Ex. 2 at 1.

8 Ex. 1.

9 Ex. 1 at 1-2.

10 Ex. 4 at 1.

11 Ex. 5 at 3.

12 Ex. 4 at 1.

13 Ex. 4; Ex. 6; Ex. 9; Ex. 11.

14 Ex. 4 at 1-2.

15 Ex. 4 at 5, 8.

On March 2, 2017, Mr. G requested an informal appeal for his family's applications.<sup>16</sup> Mr. G claimed that the division gave him incorrect information about the 5-year rule.<sup>17</sup> In particular, he claimed that the division's January 27, 2016 email led him to believe that he did not need to return to Alaska during calendar year 2016 to qualify for the 2017 PFD.<sup>18</sup>

On June 6, 2017, a division representative, Delilah Bernaldo called Mr. G to see if he had any proof of any other returns to Alaska.<sup>19</sup> Mr. G verified that he did not return to Alaska for more than 15 days during the past 5 years.<sup>20</sup> Mr. G repeated his argument that the information in the division's January 27, 2016 email was misleading and induced him not to return to Alaska during 2016.<sup>21</sup> Ms. Bernaldo apologized for the misunderstanding but nevertheless informed Mr. G that the division was affirming the denial.<sup>22</sup> Ms. Bernaldo explained that the division's website has statutes and regulations, as well as a special section of information for military members, specifically stating that military members have to return to Alaska for at least 30 cumulative days over the most recent 5-year-period to overcome the presumption of abandoned residency.<sup>23</sup> The following day, the division sent Mr. G a letter affirming the denial of the family's applications.<sup>24</sup>

On July 5, 2017, Mr. G submitted a timely request for a formal hearing.<sup>25</sup> Mr. G argued that he had contacted the division several times and received incorrect information.<sup>26</sup> He points to the division's January 27, 2017 email as proof of the alleged misinformation the division gave him.<sup>27</sup> He claimed that he would have returned to Alaska for 15 days in 2016 if the division had not told him that he did not need to do so until 2017.<sup>28</sup>

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<sup>16</sup> Ex. 5.  
<sup>17</sup> Ex. 5 at 2.  
<sup>18</sup> Ex. 5 at 3.  
<sup>19</sup> Ex. 8.  
<sup>20</sup> Ex. 8.  
<sup>21</sup> Ex. 8.  
<sup>22</sup> Ex. 8.  
<sup>23</sup> Ex. 8.  
<sup>24</sup> Ex. 7; Ex. 8.  
<sup>25</sup> Ex. 10.  
<sup>26</sup> Ex. 10 at 2.  
<sup>27</sup> Ex. 10 at 2.  
<sup>28</sup> Ex. 10 at 2.

At the hearing, Mr. G did not dispute that he did not return to Alaska for 30 cumulative days over the 5-year period of 2012 through 2016.<sup>29</sup> Instead, Mr. G explained that he contacted the division for clarification about what years the division counted for the 5-year rule for his 2017 PFD.<sup>30</sup> He did not understand whether the five-year period was 2011 to 2015 or 2012 to 2016.<sup>31</sup> Based on the January 27, 2017 email, he did not think that he needed to return to Alaska in 2016.<sup>32</sup> And he did not seek further clarification because he thought he got the response he was looking for—he believed that he had a clear understanding.<sup>33</sup> The division’s representative, Bethany Thorsteinson acknowledged that she could see how Mr. G interpreted the email the way he did, but nevertheless, pointed out that although the email was unclear, it was not incorrect.<sup>34</sup>

### III. Discussion

Although most Alaska residents must be physically present in Alaska for at least 180 days per year to qualify for a dividend, a resident who is absent for one of the “allowable absences” may still receive a dividend even if absent for more than 180 days.<sup>35</sup> One of the allowable reasons for a resident to be absent from the state is military service outside of the state, or to be a dependent of a person who is in the military.<sup>36</sup> This provision applied to the G family for the first five years of their absence from the state.

However, if a person is absent for more than 180 days in each of the five consecutive years preceding the PFD application, the division must presume that person is no longer an Alaska resident.<sup>37</sup> To rebut the presumption, a person must provide clear and convincing evidence that he or she was physically present in the state for at least 30 cumulative days during the past five years and that he or she intends to return and remain in the state indefinitely.<sup>38</sup> And so, a person who is not physically present in Alaska for at least 30

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<sup>29</sup> G Testimony.

<sup>30</sup> G Testimony.

<sup>31</sup> G Testimony.

<sup>32</sup> G Testimony.

<sup>33</sup> G Testimony.

<sup>34</sup> G Testimony.

<sup>35</sup> AS 43.23.008(a).

<sup>36</sup> AS 43.23.008(a)(3).

<sup>37</sup> AS 43.23.008(d).

<sup>38</sup> AS 43.23.008(d); AS 43.23.095.

cumulative days during the five preceding qualifying years cannot overcome the presumption that he or she is no longer a resident.<sup>39</sup>

Here, there is no dispute that Mr. G did not physically return to Alaska for 30 cumulative days during the period of January 1, 2012 through December 31, 2016. Instead, Mr. G argues that he contacted the division several times for clarification and the division provided incorrect information. So, while Mr. G is not eligible as a matter of law, he has asserted—as an alternative theory of eligibility—that as a matter of equity his family’s PFD applications should be approved. While not phrased in such terms, Mr. G has claimed that the division is estopped from denying his application because he acted in reliance (postponed a trip to Alaska to 2017 instead of 2016) on a statement made by a division employee, and that as a result of that reliance, his applications have been denied.

The Alaska Supreme Court has stated:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the government body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.<sup>40</sup>

The first two elements of equitable estoppel are the most difficult to prove in this case. Mr. G asserts that he contacted the division multiple times to seek clarification about the 5-year rule—specifically, which years would be considered for the five-year period.<sup>41</sup> Although the response he received could have been written more concisely,<sup>42</sup> Mr. G’s misunderstanding is not sufficient to prove that the division should be equitably estopped from applying its statute to Mr. G’s application. Although poorly worded, the information contained in the email was correct on its face. The email informed Mr. G that as of January 27, 2016, Mr. G had 226 days of physical presence in Alaska since he left for military service; that 211 of those days would not count, leaving him with just 15 days to be counted for his 2017 PFD; and that under AS 43.23.008(d), Mr. G needed “to return for at least 15 more days *before* the 2017 PFD.”<sup>43</sup>

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<sup>39</sup> AS 43.23.008(d).

<sup>40</sup> *Crum v. Stalnaker*, 936 P.2d 1154, 1157 (Alaska 1997); *In re CG*, OAH No. 09-0436-PFD (January 2010) (applying equitable estoppel principal to a PFD appeal).

<sup>41</sup> Ex. 10 at 2; G Testimony.

<sup>42</sup> Ex. 5 at 3; G Testimony.

<sup>43</sup> Ex. 2 at 1.

Accordingly, Mr. G has failed to rebut the presumption that he and his daughters are no longer Alaska residents. And the division's January 27, 2017 email is insufficient to apply equitable estoppel to the division's decision to deny the G Family's PFD applications.

**IV. Conclusion**

The G family was physically present in Alaska for only 15 days during the five years preceding their application for a 2017 dividend. Accordingly, they have not rebutted the presumption that they are no longer Alaska residents. And because the division did not give Mr. G incorrect information, the division is not equitably estopped from denying the G family's PFD applications. The G family is not eligible for a 2017 dividend, and the division's denial is affirmed.

Dated: October 11, 2017

Signed  
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Jessica L. Srader  
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 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 8<sup>th</sup> day of November, 2017.

By: Signed  
\_\_\_\_\_  
Signature  
Bride Seifert  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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