

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

In the Matter of)	
)	
E X)	OAH No. 17-0833-PFD
_____)	Agency No. 2016-017-4615

DECISION

I. Introduction

E X applied for a 2016 Permanent Fund Dividend (PFD). The Department of Revenue, Permanent Fund Dividend Division (Division) denied Ms. X’s application. The Division determined that Ms. X intentionally provided deceptive information on her application by failing to report absences of over 90 days; that she maintained her principal home outside of Alaska during the 2015 qualifying year; and that she was not an Alaska resident as she had taken actions inconsistent with Alaska residency. The Division denied her application initially and at the informal appeal level. Ms. X appealed that decision.

After a full hearing and based on the evidence presented, the division’s decision denying Ms. X’s 2016 PFD is affirmed.

II. Facts and Procedural Background

E X has filed for and received the PFD each year since 2004.¹ According to Ms. X’s 2004 PFD application, her Alaska residency began on December 16, 2001.² She moved her household belongings to Alaska, registered to vote in Alaska, registered a vehicle in Alaska, and obtained an Alaska driver’s license in December 2001.³ She purchased, leased, or rented a place to live in Alaska in January 2002.⁴ And she obtained permanent employment for the Alaska Marine Highway System (AMHS) in May 2003, where she worked until August 21, 2017.⁵

¹ Ex. 1 at 3.

² Ex. 14 at 3.

³ *Id.*

⁴ *Id.*

⁵ Ex. 14 at 3; Ex. 25 at 4. AMHS terminated Ms. X’s employment after the Department of Transportation and Public Facilities concluded that her primary residence is Wyoming and that she “provided information to the Department with the intent to mislead [AMHS] concerning her eligibility for the Cost of Living Differential (COLD).” Ex. 25 at 4. Ms. X testified that she planned to appeal that termination through AMHS’s grievance process.

Ms. X owns, maintains, and pays property taxes and utilities for a house located in No Name, Alaska.⁶ She has a valid Alaska driver's license.⁷ She is registered to vote in Alaska.⁸ She owns personal property, household goods, and motor vehicles in No Name.⁹ Ms. X has family and friends who live in No Name.¹⁰ She has a dog in No Name.¹¹ And she testified that although her future is uncertain because of her employment situation, she considers No Name her home and intends to remain in Alaska indefinitely.¹²

On June 22, 2015, Ms. X—who has physical and legal custody of four of her grandchildren—filed a Motion for Modification in the children's custody case.¹³ In that motion, Ms. X stated:

[W]e own property and a home in WY where my husband is developing land. The youngest, T, is starting preschool and the oldest, E S is starting Jr. High School. I would like permission to move and relocate before the '15-'16 school year starts. The children's mom, T J, will be re-located to WY in the Fall of 2016.¹⁴

Ms. X and her husband own a storage complex with a 1,900-square-foot residence or apartment, located in Wyoming.¹⁵ Ms. X took the children to Wyoming on August 13, 2015.¹⁶ She stayed in Wyoming for five days, and returned to No Name on August 18, 2015.¹⁷ Ms. X left Alaska again on the ferry on September 23, 2015.¹⁸ Ms. X underwent double-knee replacement surgery in Washington on October 16, 2015.¹⁹ After her surgery, Ms. X returned to Wyoming, where she received physical therapy and rehabilitation.²⁰

⁶ Ex. 13 at 12-27.

⁷ Ex. 13 at 11.

⁸ Ex. 13 at 11.

⁹ Testimony of N T-X; Testimony of E Q; Ex. 13 at 22, 25-26.

¹⁰ T-X Testimony; Q Testimony; X Testimony; Ex. 13 at 23-26.

¹¹ Ex. 13 at 24.

¹² X Testimony.

¹³ Ex. 19 at 21-23.

¹⁴ Ex. 9 at 2; Ex. 19 at 21-23.

¹⁵ Ex. 20; Ex. 22 at 3.

¹⁶ X Testimony; Ex. 11 at 7.

¹⁷ X Testimony; Ex. 11 at 7.

¹⁸ X Testimony; Ex. 4 at 9.

¹⁹ X Testimony; Ex. 10 at 2.

²⁰ X Testimony; Ex. 10; Ex. 13 at 8, 27-29.

Ms. X’s husband, C X, and her four grandchildren currently live on the property in Wyoming.²¹

On January 23, 2016, Ms. X filed an online application for the 2016 PFD with an electronic signature certifying that the information provided in the application was true and correct.²² In her application, Ms. X denied that she was “gone from Alaska more than 90 days total” in 2016.²³ However, Ms. X was absent from Alaska for at least 117 days during 2015, her most notable absence being for 99 days from September 23 to December 31, 2015.²⁴ Ms. X explained that she underwent two knee replacements; that she had to regularly attend follow up appointments; and that she sought physical therapy and rehabilitation in Wyoming, where she had family who could assist her during her recovery.²⁵

On September 22, 2016, AMHS Human Resource Consultant T C contacted the Alaska Department of Revenue Criminal Investigations Unit (CIU), reporting that AMHS was investigating Ms. X’s claim for AMHS’s Cost of Living Differential (COLD) and that Ms. X may not be living in Alaska.²⁶ Ms. C informed the investigator that Ms. X and her husband own property in Wyoming; that Ms. X had petitioned the No Name Superior Court to relocate her grandchildren to Wyoming in 2015; and that Ms. X had been absent from Alaska for over 90 days during 2015—the qualifying year for the 2016 PFD.²⁷

The CIU launched an investigation.²⁸ The investigators interviewed Ms. X and collected evidence, including: travel documents; a calendar of Ms. X’s absences and AMHS work schedule that was created by Ms. C; property tax and county assessor’s records from Wyoming; and No Name School District records for Ms. X’s school-age grandchildren.²⁹ Based on their investigation, the CIU investigators concluded that Ms. X moved the children to Wyoming in 2015; that Ms. X and her husband owned businesses and a residence in

²¹ X Testimony. Ms. X testified that her husband lives in a trailer on the property, and that her daughter and grandchildren live in the apartment. Although there is no mention of Ms. X’s husband, C, in the custody order, C was a co-plaintiff in the petition for custody of their grandchildren. Ex. 24.

²² Ex. 1 at 1.

²³ *Id.*

²⁴ Ex. 4 at 9; Ex. 17; Testimony of E X. Ms. X returned to No Name on January 6, 2016.

²⁵ X Testimony; Ex. 10; Ex. 13 at 8, 27-29.

²⁶ Ex. 2 at 6; Testimony of T C.

²⁷ *Id.*

²⁸ Ex. 2.

²⁹ *Id.* at 6.

Wyoming; and that Ms. X had been absent from Alaska for more than 90 days in 2015.³⁰ They remanded the case to the PFD eligibility section to determine Ms. X's eligibility.³¹

On December 23, 2016, the Division denied Ms. X's application.³² The Division concluded that Ms. X denied being absent from Alaska for more than 90 days, when she was in fact absent from the state for at least 117 days during 2015; that she was maintaining her principal home in the state of Wyoming; and that she had failed to demonstrate the intent to remain an Alaska resident indefinitely.³³ Ms. X requested an informal appeal.³⁴

In her request for an informal appeal, Ms. X maintained that her residence is in No Name and that her absences were due to her double knee replacement. She explained that she took her grandchildren to Wyoming to transition them back to their mother's care when her daughter was released from prison.³⁵ At the informal appeal level the Division affirmed the denial, concluding that: Ms. X maintained her principal home outside of Alaska during the 2015 qualifying year and prior to her date of application; she disclosed in a court proceeding or affidavit that she was a resident of another state; she intentionally provided deceptive information on her application by failing to disclose a reportable absence; and she did not meet the definition of an Alaska resident as it applies to the PFD program on the date she filed her application.³⁶ Ms. X appeals that decision.

III. Discussion

In a PFD denial appeal, the person who filed the appeal, in this case Ms. X, has the burden of proving by a preponderance of the evidence that the Division's decision is incorrect.³⁷

A. Ms. X intentionally provided deceptive information when she failed to disclose her absences from Alaska.

It is important to the integrity of the PFD program that applicants give accurate answers on their PFD applications. The application asks about absences totaling more than 90 days so that the Division can evaluate circumstances that may affect residence or

³⁰ *Id.* at 7.

³¹ *Id.* at 7.

³² Ex. 6.

³³ Ex. 6.

³⁴ Ex. 7.

³⁵ Ex. 7 at 2.

³⁶ Ex. 12 at 1.

³⁷ 15 AAC 05.030(h).

eligibility. Those who do not report their absences interfere with the Division’s ability to perform this task.

The Department of Revenue regulations provide that the Division “will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department.”³⁸ Ms. X’s denial regarding her 90-day absence was inaccurate and thus deceptive to the division.

As stated, the number of days a person is absent from Alaska is a fundamental element of PFD eligibility. It is incredible to believe that Ms. X’s more than 3-month absence from Alaska from September 23, 2015 through January 6, 2016—returning to Alaska less than 3 weeks before she applied for the PFD—slipped Ms. X’s mind. Although Ms. X attempts to explain away the omission by claiming confusion about what absences she was required to report, or alternatively, claiming that she was rushed, stressed, and on pain medication when she filed her application,³⁹ her explanations for the omission lack credibility—a 3-month absence is significant, the PFD application deadline was still months away, and Ms. X had plenty of time to verify the accuracy of her responses before certifying them. Indeed, Ms. X demonstrated a clear understanding of the requirement to report absences in prior PFD applications.⁴⁰ Instead, it is far more likely that Ms. X knew that her extended absence exceeded 90 days; she knew that she was required to report absences that exceeded 90 days; and she simply did not care if her answers on the application were accurate. In law, when one gives false information because of reckless indifference to whether it is true or false, the misrepresentation is intentional.⁴¹ Accordingly, Ms. X’s 2016 PFD application must be denied, and the Division’s decision is affirmed.

B. Ms. X maintained a principal home in Wyoming during the qualifying year.

The PFD eligibility requirements are strict. Alaska regulation, 15 AAC 23.143(d) contains a list of actions that, if taken during the qualifying year, will make a person

³⁸ 15 AAC 23.103(j). That regulation was amended, effective May 22, 2016. The new version states, “The Department will deny an application if the department determines that an individual intentionally, recklessly, or negligently provided false information or omitted material facts, including failure to disclose a reportable absence to the department.” The Division asserts that the new regulation should be applied retroactively. Because Ms. X is ineligible under the old version, I need not decide whether the amended version or the old version applies.

³⁹ X Testimony.

⁴⁰ Ex. 14 at 5-5.

⁴¹ See *In re M.E. & C.M.*, OAH No. 13-1625-PFD (March 17, 2014); see also BLACK’S LAW DICTIONARY 810 (6th ed. 1990) (defining “intentionally” as “to do something purposely, and not accidentally”).

ineligible for the following year, regardless of the applicant’s Alaska residency status. The relevant regulation reads in part:

(d) An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has

(1) maintained the individual’s principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed

(A) in AS 43.23.008(a)(1) – (3) or (9) – (11), or

(B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph[.]⁴²

Thus, Alaska residents may not maintain their principal home in another state at any time during the qualifying year and still qualify for a dividend, unless they are full-time students, serving in the military, serving in or working for Congress, working for the State of Alaska in a field office, or accompanying as a spouse or child an eligible person absent for one of these reasons.⁴³ In the case where a person has maintained a principal home in another state, the Division need not investigate any further to determine whether an applicant maintains the proper intent to remain an Alaska resident. And so, regardless of Ms. X’s residency status, she is not eligible for a dividend if she has maintained her principal home in another state at any time from the beginning of the qualifying year through the date of application, unless she was allowably absent for one of the specific reasons listed in the above regulation.

Although Ms. X retained significant ties and returned to Alaska in 2015, the evidence clearly shows that for at least part of 2015, Ms. X maintained her principal home in Wyoming. Ms. X’s husband, C, lives in Wyoming. In her grandchildren’s custody case, Ms. X represented to the No Name Superior Court that she and her husband maintain a home in Wyoming, and she asked the court for permission to “move and relocate there.”⁴⁴

⁴² 15 AAC 23.143(d)(1).

⁴³ 15 AAC 23.143(d)(1); AS 43.23.008(a)(1) – (3) or (9) – (11), (13).

⁴⁴ The Division also claims that Ms. X is ineligible because she disclosed in a court proceeding that she is a resident of Wyoming. Although I find Ms. X’s representation to the court troubling, Ms. X did not expressly claim to be a Wyoming resident. There is no indication whatsoever about how long Ms. X intended to remain in Wyoming. Because the Division’s decision is affirmed on other grounds, I do not need to decide this issue.

Ms. X moved her grandchildren—children whom she has primary physical and legal custody—to Wyoming. She and her husband own businesses in Wyoming. And Wyoming is where she went to recover from double-knee replacement surgery. None of the exceptions listed in 15 AAC 23.143(d) applies to Ms. X’s circumstances. For these reasons, Ms. X has failed to prove that she was eligible for the 2016 PFD, and the Division’s denial of her application on this basis is affirmed.

Because the Division’s decision is affirmed on other bases, I need not decide whether Ms. X abandoned her Alaska residency or whether she maintains the proper intent to remain an Alaska resident.

IV. Conclusion

Ms. X intentionally provided deceptive information on her application, and she maintained a principal home outside of Alaska during 2015, making her ineligible for a 2016 PFD. The Division’s denial of Ms. X’s 2016 PFD application is therefore **AFFIRMED**.

Dated: November 3, 2017

Signed _____
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 12 day of December, 2017.

By: *Signed* _____
Signature
Sheldon Fisher
Name
Commissioner, Department of Revenue
Title

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