

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

In the Matter of)
)
M AND Q U & F AND T U (MINORS)) OAH No. 17-1093-PFD
) Agency No. 2017-010-5668
_____)

FINAL DECISION AFTER REMAND

I. Proceedings After Issuance of Proposed Decision

On January 10, 2018, a Proposed Decision was issued in this matter.¹ The decision affirmed the Permanent Fund Dividend Division’s (“Division”) denial of the U’s 2017 Permanent Fund Dividends (PFD) on the grounds that they were ineligible under 15 AAC 23.143(d)(1) because they maintained a principal home in another state or country during a part of the 2016 qualifying year. By letter dated February 1, 2018, Ms. U, on behalf of her family, questioned whether the decision was correct under 15 AAC 23.173(f)(4). The letter asked:

Q maintained his employment in Alaska and a boat home outside Alaska ‘to which we regularly traveled’ which would seem consistent with 15 AAC 23.173(f)(4) which allows an Alaska employed person to ‘maintain a home or other abode outside Alaska.’

The way I read, not allowing one to live in a home outside of Alaska in 15 AAC 23.143(d)(1) seems to contradict the allowance of a home not located in Alaska as defined in 15 AAC 23.73(f)(4). Am I missing something here.²

This issue was never raised in the previous proceedings. Therefore, it was never addressed in the original decision. The letter served as a timely Proposal for Action under AS 44.64.060(e).

On February 2, 2018, the Commissioner of Revenue delegated final decision authority to the undersigned Administrative Law Judge pursuant to AS 44.64.030(c). By Order dated February 20, 2018, the undersigned declined to adopt the proposed decision, remanded the case to herself and ordered a revised decision that addresses the new issue raised by the Proposal for Action. After the delegation and remand, the Division was ordered to provide further briefing on the issue raised by Ms. U’s letter by March 23, 2018. The Division timely filed the requested supplemental briefing,³ and on March 28, 2018, a hearing was held to address the issue raised.

¹ That original decision is included in this final decision as originally issued except for the renumbering of footnotes.

² Letter from M U to Commissioner Fisher dated 2/1/18.

³ Supp. Br. of the Division 3/23/18,

Based on further review, 15 AAC 23.173(f)(4) does not change the previous decision that Q U is not eligible for the 2017 PFD. Therefore, the previous decision, appended here, stands and the Division's denial of the 2017 PFDs for the U family is affirmed.

II. Discussion

A. *Relevant Facts*⁴

As found in the proposed decision, the Us are longtime Alaska residents and maintained their residency in Alaska throughout their almost five and one half year trip on their sailboat outside of Alaska. In 2013, Mr. U obtained employment with the Alaska No Name Business as a web designer.⁵ While working for the Alaska No Name Business, Mr. U generally lived with his family on the sailboat, but traveled to Alaska when necessary for work.⁶ This was also true during 2016, the qualifying year for the 2017 PFD. During that year, prior to his permanent return on June 27, 2016, Mr. U spent most of his time with his family outside of Alaska.⁷

B. *Application of 15 AAC 23.173(f)(4)*

15 AAC 23.173(f)(4) provides:

(f) An individual described in this subsection may be eligible to receive a dividend if, with the application, the individual provides documentation that demonstrates to the department's satisfaction an intent to remain indefinitely in Alaska despite the nature of the individual's employment in Alaska. The department may require additional proof of the individual's intent to remain in Alaska. This subsection applies to

(4) an individual who is employed in Alaska but who maintains a home or other abode outside Alaska to which the individual regularly travels.

The issue presented by this remand is whether there is any conflict between 15 AAC 23.143(d)(1), which provides a bright line disqualification for an individual who maintains a principal residence in another state or country during any part of the qualifying year, and 15 AAC 173(f)(4). Looking broadly at section 23.143 and closely at subsection (f)(4), there is not.

15 AAC 23.173, looked at as a whole, is addressed to establishing residency. It addresses situations in which an individual is present in Alaska but under circumstances that raise

⁴ The facts relevant to this decision after remand are generally detailed in the original decision and, for the most part, not repeated here.

⁵ Verification of Employment Letter dated 2/22/18.

⁶ Testimony of Ms. U.

⁷ Exhibit 1, p. 9.

questions concerning the issue of permanent residency. For example, subsection (e) speaks to situations where the applicant's spouse is not a resident. Subsection (f) provides that an individual may prove intent to remain indefinitely in Alaska, the central tenet of residency, "despite the nature of the individual's employment". This subsection, in its most straightforward reading, is meant to address someone who is in Alaska and who is attempting to **establish** residency despite working under circumstances that do not clearly demonstrate permanent and indefinite intent to remain in the state. Thus, the first three items in the list of circumstances to which subsection (f) applies, talk about seasonal employment, contract workers and individuals who have right for paid return to homes outside of Alaska. Seen in this light, subsection (f)(4)'s reference to someone who "maintains a home or some other abode outside of Alaska to which the individual regularly travels" addresses someone who may have more than one home due to their work but is in the process of establishing permanent residence in Alaska. This view of subsection (f)(4) is furthered by reading subsection (g) which describes some of the methods of proof to establish residency in terms of buying a house in Alaska, moving household goods to Alaska and proof of tax filing, licensing and other documentation showing an intent to establish permanence in the state.

As found in the original decision, the U's are long time Alaska residents who do not have ties to any other place and have maintained their Alaskan residency despite their lengthy stay aboard their sailboat outside the state. 15 AAC 23.175(f) simply does not apply to Q U's situation.

Looking at the provision with a narrow view also supports this result. As noted in the Division's Supplemental Briefing subsection (f)(4) talks about an individual who "is employed **in** Alaska" (emphasis added). Mr. U was employed **by** the State of Alaska. However, his job, for the most part, did not require him to work **in** Alaska. During his employment, he generally teleworked from his principal home aboard the sailboat with his family and traveled to Alaska when required for work. This view interprets subsection (f)(4) consistently with subsections (1) – (3). This alone, would exclude Mr. U's circumstance from eligibility under the cited provision.

III. Conclusion on Remand

Q U is not eligible for the 2017 PFD under the provisions of 15 AAC 23.173(f)(4). Therefore, the original decision issued in this matter, and included below, still stands unaltered except for this supplemental analysis.

The Us are long time Alaska residents who have maintained their residence throughout their absence from the state. The Us maintained their principal home in another state or country during a part of the qualifying year of 2016. Therefore, the Division's decision denying the U's applications for the 2017 PFD's under 15 AAC 23.143(d)(1) is AFFIRMED.

ORIGINAL PROPOSED DECISION ISSUED JANUARY 10, 2018

I. Introduction

M and Q U and their two minor daughters applied for 2017 Permanent Fund Dividends (PFD). The Permanent Fund Dividend Division ("the division") determined that M and Q U were not eligible initially and at the informal appeal level. They also determined the minors were not eligible based on the ineligibility of Q U, their sponsoring parent. The Us requested a formal hearing. The hearing was held on November 27, 2017. Ms. U appeared in person, representing the family, and Peter Scott appeared as the division's representative. Supplemental briefing concerning the interpretation of 15 AAC 23.143(d)(1) as it applies to the Us was requested and filed by the division.

I find that the Us proved by clear and convincing evidence that they maintained their residency in Alaska throughout their time outside the state under AS 43.25.005(d)(1), and thus, they were residents for purposes of the PFD on January 1, 2016. Notwithstanding this finding, the division's denial of the Us' applications is affirmed because the Us maintained their principal home in another state or country during part of the qualifying year. Thus, they were each ineligible for the 2017 PFD.

II. Facts

The Us and representatives of the division have spent a large amount of time and effort on this matter. The Us have provided significant documentation supporting all of their factual claims and have been straightforward and consistent in all statements and submissions. The division has also gone to significant effort to analyze the Us' evidence and review their claims of eligibility. As a result, although there is a fairly lengthy record of documentation and communications, the material facts are not in dispute.

Both M and Q U are longtime residents of Alaska and longtime recipients of the PFD. Q U began receiving the PFD at the program's inception in 1982, and M U began receiving the PFD in her

first year of eligibility in 1987. Both children qualified and began receiving the PFD in their first year of eligibility after birth.⁸

In 2010, the Us purchased a sailboat and began what ultimately became a five year eight month sojourn living and traveling on their sailboat along the U.S. East Coast and the Caribbean. While they were gone, they lived full time on the sailboat, home schooling their children and traveling to various destinations, for the most part anchoring in harbors to avoid moorage and marina fees. The Us' original plan was to only be gone for approximately one year.⁹ To this end they listed their boat for sale in 2011. However, they had difficulty selling the boat and did not have the funds to return to their home in Alaska while storing the boat outside the state. For this reason, they constantly extended their projected return date in their PFD applications filed with the division over the years.¹⁰

While they were gone the Us used the sailboat as their permanent home. The only time they stayed on land was for boat repairs, the need to perform routine maintenance and other actions necessary to prepare and show their boat for sale.¹¹ Throughout their time living on the sailboat, the Us maintained numerous ties to Alaska. M and Q U maintained voter registrations, drivers licenses, business licenses, vehicle registration and ownership of a number of properties in Alaska.¹² They also traveled back to Alaska on various occasions. Ms. U returned to Alaska with the children in October 2011 for six weeks and again in November 2012 for three months.¹³ Mr. U, in addition to a number of trips back to Alaska, maintained a web design business licensed in Alaska and in 2013 he took a job with the Alaska No Name Business during which, while still living with his family on the boat, he took a number of trips back to Alaska to meet with clients and for other business reasons.¹⁴ The Us never established any ties to another state or jurisdiction, such as payment of taxes, registrations, licenses or receipt of benefits.¹⁵

⁸ Exh. 1 pp. 6,12,17, 22.

⁹ Exh. 4 pp. .3-4, Exh. 5 p.18, Exh. 8 pp 5-6, Testimony of M U.

¹⁰ Exh. 4. p. 3. The Us' 2010 PFD applications stated that they expected to return home in less than 9 months. The 2012 applications listed their expected return date as May 2013. On their 2014 applications, the Us listed the expected return date to April 2015, and their 2015 applications extended the date again—until April 2016. The Us filed for PFD's during the years they were away on the advice of the division and did not actually seek to obtain PFDs in those years. Exhs 9, 5 p. 19.

¹¹ Exh. 5 p. 18, Testimony of M U.

¹² Exh. 4. p. 2. The Us did sell their Alaska residence in 2015. Ms. U testified that this sale was in order to save money by downsizing their home on their return and in order to obtain money for their return to Alaska.

¹³ Exh. 4 p.3.

¹⁴ Exh. 5 pp.8-9.

¹⁵ Exh. 4 pp. 4,16.

The Us were finally able to sell their sailboat in late 2015, with the new owners taking possession in February 2016. Ms. U and the children then flew to Florida to retrieve their RV and traveled home to Alaska, arriving on June 24, 2016.¹⁶ Q U returned to Alaska on January 13, 2016 for work with the No Name Business. He travelled back and forth to join his family and continue to work in No Name City until his final return to Alaska is on June 27, 2016.¹⁷ M and Q U applied for the 2017 PFD along with two minor children. Both adults were in the state for the requisite 186 days required of Alaska residents who are not on an allowed absence such as a military posting, and both had been in Alaska for the required 30 days in the past five years. Two minor children applied and were sponsored in their applications by Q U.¹⁸

The division denied the Us' applications for the 2017 PFD, stating that they had failed to establish residency prior to January 1, 2016. The division concluded that the Us' residency for purposes of the PFD had been severed sometime during the over five years that they had been living outside the state.¹⁹ The Us requested an informal hearing, arguing, based on the facts and further documentation, that they had always maintained their residency in Alaska throughout their trip and had never taken any action inconsistent with their desire to return and remain permanently to Alaska.²⁰

The division corresponded with the Us and requested and received further information and argument before issuing an informal appeal decision denying their applications. The division gave three reasons as follows:

Issue A: Your most recent Alaska residency did not begin prior to January 1, 2016; therefore, you were not a state resident during the entire qualifying year of 2016.

Issue B: You maintained your principal home outside of Alaska during the 2016 qualifying year.

Issue C: You did not meet the definition of an Alaska "state resident" as it applies to the Permanent Fund Dividend program during the entirety of the 2016 qualifying year.²¹

The division found that when the Us left Alaska in 2010 they established their principal home as the sailboat and further that their Alaska residency for purposes of the PFD program did not remain intact

¹⁶ Exh. 5 p. 8.

¹⁷ Exh. 5 p. 9.

¹⁸ Exh. 9.

¹⁹ Exh. 3.

²⁰ Exh. 4. The Us provided documentation to support each of their statements, and the facts listed are not disputed by the division.

²¹ Exh. 7.

throughout the period from 2010 to 2016, and therefore they would have had to reestablish Alaska residency by December 31, 2015 in order to qualify for the 2017 dividend.²²

The Us filed a timely request for formal hearing which was held on November 27, 2016. In its position paper and at the hearing, the division relied on the finding that the Us' principal home was outside of Alaska during 2016 as the preeminent disqualifying factor, noting that this factor alone was sufficient to disqualify the Us from the PFD. Mr. Scott noted that the division did continue to believe that the Us had severed their residency due to the length of their absence, and other factors. Ms. U provided testimony concerning the family's absence, their lack of ties to any other state or country and their unbroken intent to return to Alaska permanently.

III. Discussion

The applicant bears the burden of proving that the division wrongly denied a PFD.²³ AS 43.23.005 defines the requirements for eligibility to receive a PFD. For individuals, such as the Us, who were not physically present in the state throughout the qualifying year, they must be a state resident during the entire year and any absence must be allowed by AS 43.23.008. Under AS 43.23.008(d), if an individual has been absent for more than 180 days in each of the preceding five years, there is a rebuttable presumption that the individual is no longer a state resident. The applicants may rebut this presumption by presenting clear and convincing evidence that if not present in the state they intend to return to the state and remain permanently. The statute sets forth a number of factors to be considered in making that determination.²⁴ The division, after extensive investigation and review of the evidence, found that the Us did not meet their burden to overcome this presumption. On review of the facts presented I disagree and find that the Us met their burden by clear and convincing evidence.²⁵

AS 43.23.008(e) provides a list of factors to consider in determining whether the individual intends to return and remain in the state indefinitely. It states:

- (e) To determine whether an individual intends to return and remain in the state indefinitely, the department shall consider all relevant factors, including
 - (1) The length of time the individual was absent from the state compared to the length of time the individual was physically present in the state;
 - (2) The frequency and duration of voluntary return trips to the state during the past 5 years;

²² Exh. 7.

²³ 15 AAC 23.113(b)(1).

²⁴ AS 43.23.0008(d)(1) and (e).

²⁵ There is no question that the Us each had been physically present in the state for 30 days during the past five years. AS 43.23.008(d)(1). Therefore, the question was, reviewing the listed factors, whether they established an intent to return to Alaska and remain permanently.

- (3) Whether the individual's intent to return to and remain in the state is conditioned on further events beyond the individual's control;
- (4) The ties the individual has established with the state or another jurisdiction, as demonstrated by
 - A. Maintenance of a home;
 - B. Payment of resident taxes
 - C. Registration of a vehicle
 - D. Registration to vote and voting history
 - E. Acquisition of a driver's license, business license or professional license; and
 - F. Receipt of benefits under a claim of residency in the state or another jurisdiction

Reviewing the record and the evidence and testimony provided by Ms. U, I believe they have met this burden. Both adult Us are longtime residents of Alaska. Despite their lengthy absence, it was only a small percentage of the years both have lived in Alaska. Mr. U returned numerous times during the absence and took a state job for the last few years. Ms. U returned for lengthy visits early in the absence but less so due to financial reasons from 2013-2016. Neither U established any ties to any other jurisdiction. All of their objective indicia of residence, such as licenses, voter registration, land ownership, and vehicle registration, was with Alaska. It is true that according to Ms. U, their desire to return home earlier was stymied by their inability to sell their sailboat, an event arguably "beyond the individual's control". However, at the hearing, Ms. U explained that they sold their house, in part, in order to be able to obtain the funds to return to Alaska if they could not sell the boat, and I am convinced by the evidence and her testimony, that the difficulty in selling the boat delayed their return but did not impact their intent at all times to return and remain permanently in Alaska.²⁶

Meeting the rebuttable presumption that they were Alaska residents on January 1, 2016, however, does not resolve the Us' eligibility in this case. In order to receive their 2017 PFDs the Us would have to prove that they are not disqualified from eligibility under 15 AAC 23.143(d)(1).

15 AAC 23.143(d)(1) provides a bright-line disqualification that applies regardless of whether the applicants are Alaska residents at the beginning of the qualifying year. It states:

(d) An individual is not eligible for a dividend if, 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

²⁶ See *Matter of Q.L. OAH 13-1293-PFD* (ALJ held that applicant did not lose residency while living in Arizona when intent to return to Alaska was delayed by financial difficulties)

(b) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in the paragraph.

Since the exceptions to section (d)(1) do not apply, the Us are ineligible for the 2017 PFD if they maintained their principal home in another state or country at any time during the qualifying year.

There is no question that the Us made their sailboat their principal home while they were living outside of Alaska from 2010 until their return in 2016. Ms. U acknowledged that in her submissions and testimony.²⁷ There is also no question that the sailboat was “outside of Alaska” throughout this time and during part of 2016. And under section 23.143(d)(1) the Us would not be eligible to receive a PFD if they maintained their principal home in another state or country for even one day during 2016.²⁸ The unique issue for this appeal is whether the regulation applies to the factual situation presented by the Us, individuals who lived in a mobile principal home, a sailboat, dropping anchor in various harbors of various countries without appearing to avail themselves of any tangible benefits of residency in the countries that they visited. For the reasons listed below, I agree with the division’s interpretation and find that in a situation such as this where the applicants had been living outside the state for a lengthy period in what was, despite being a sailboat, their principal home, the interpretation most consistent with PFD statutes and regulations and common sense would, in this circumstance, equate “maintained in another state or country” with maintaining the applicants principal home “outside” of Alaska. To read the regulation otherwise would appear to make an unreasonable loophole for someone whose principal home is mobile and would defeat the purpose of the regulation by making the division spend extensive time and resource attempting to determine connections to specific jurisdictions.²⁹

In making the determination whether an applicant’s principal home is maintained in another state or country the applicant’s ties to Alaska are not relevant. Thus, in the *Matter of M.E.*,³⁰ the Administrative Law Judge considered an individual who, at the time of the application was employed and living in Alaska with many other ties to the state. The judge found, nevertheless, that the applicant was ineligible because she maintained a rental home in Washington state.

While not directly on point, the decision in *M.E.* suggests it is not the ties with another jurisdiction that the regulation is meant to address but the fact of a residence outside of Alaska.

²⁷ See e.g. *In re: M.E.* OAH No. 09-2284- PFD (finding applicant ineligible for PFD where principal residence was rental home in Washington state despite residency in Alaska).

²⁸ See *in re: J.B.* OAH NO. 11-0058-PFD.

²⁹ See e.g., *Church v. State Department of Revenue*, 973 P.2d 1125,1128 (Alaska 1999) (the Department may issue regulations to ease the administrative burden of determining eligibility for the PFD.)

³⁰ OAH No. 09-0284-PFD (Comm’r of Revenue 2009) (published at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD090284.pdf>).

Moreover, despite the Us' lack of connection to one specific country, they certainly anchored within the waters of other jurisdictions and were therefore located within other states or countries throughout their sojourn and thus, into the qualifying year. Although the record does not establish a specific state or country where they maintained their sailboat, it does establish that during the qualifying year, their principal home was both outside of Alaska and located within the waters of one or more other countries. For this reason, I find M and Q U are not eligible for a 2017 PFD under 15 AAC 23.143(d)(1). Because the minor children's eligibility turns on the eligibility of their sponsoring parent, Q U, they are also ineligible for the 2017 PFD.³¹

IV. Conclusion

Although I find that the Us did not sever their residency with Alaska and were residents throughout the qualifying year for the 2017 PFD, they maintained their principal home during a part of the year in another state or country and, therefore, they and their children are ineligible for the 2017 PFD under 15 AAC 23.143(d)(1). The decision of the division is therefore **AFFIRMED**.

Dated: April 6, 2018

Signed

Karen L. Loeffler
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Revenue, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 April, 2018.

By: *Signed*

Name: Karen L. Loeffler
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

³¹ 15 AAC 23.113(b)(1).