

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

In the Matter of	)	
	)	
T S & K S	)	OAH No. 18-0148-PFD
	)	Agency No. 2017-059-4139
_____	)	

**DECISION AND ORDER**

**I. Introduction**

T S and K S both timely applied for the 2017 permanent fund dividend (PFD). Ms. S is on active duty military service and was out of the state for most of 2016 – the qualifying year. Mr. S, her spouse, was also absent for part of the year to accompany Ms. S. Both were absent on the dates in 2017 when they applied for the PFD and both answered “no” to the question concerning whether they were planning to return to Alaska.

The Department of Revenue, PFD Division (Division) denied their applications originally, and at the informal appeal, on the grounds that Ms. S and Mr. S failed to demonstrate that they had the requisite intent to return to Alaska and remain indefinitely. Intent to return to Alaska and remain indefinitely is a difficult, subjective determination, especially as it applies to military families. However, I find that Mr. S and Ms. S have established, by a preponderance of the evidence, that during the qualifying year, 2016, they had the requisite desire to return to Alaska as their permanent home whenever Ms. S’s military career is ended. Based on the testimony at the formal appeal hearing, the Division’s decision is reversed.

**II. Facts<sup>1</sup>**

*A. The Applications and Pre-Hearing Actions and Evidence*

Ms. S and Mr. S are husband and wife. They moved to Alaska in 2014. They applied for and received the 2016 PFD.<sup>2</sup> Both applied for the 2017 PFD. Both noted that they were absent from Alaska on the date of their applications. The reason for their absence was that Ms. S joined the United States Airforce in January 2016. The family moved to

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<sup>1</sup> The following facts are derived from the testimony of Mr. S at the formal hearing and the testimony and exhibits submitted by the Division. The testimony of Mr. S, representing himself and his wife, and the presentation of Mr. Scott, representing the Division, are both accepted as credible and the basis for factual findings.

<sup>2</sup> Testimony of Mr. S at formal hearing. Exhibit 1 pp. 5,11.

Colorado, where she was stationed, in October 2016. Throughout 2016, Mr. S worked in Alaska. The family paid taxes in Alaska and kept their licenses in Alaska.<sup>3</sup>

On both of their applications for the 2017 PFD, Ms. S and Mr. S checked the box noting that they were not currently in Alaska when they submitted their applications.<sup>4</sup> Ms. S reported that she was absent for 334 days in 2016 for purposes of her active duty service in the armed forces of the United States. Mr. S reported that he was absent for 68 days in 2016, the reason being his move to Colorado to accompany his active duty wife.<sup>5</sup>

Question 4 of the application addresses intent to return and remain indefinitely in Alaska for those who are absent from Alaska on the date of filing. Ms. S and Mr. S both checked the box asking if they were returning to Alaska, “N for no”. Ms. S provided the following explanation, “I’m stationed in Buckley Air Force Base in Colorado. I PCS to Anchorage, Yes.” Mr. S wrote, “My wife joined the airforce on January 19, 2016, we moved to Colorado on October 24, 2016. We don’t know if we can get station in Alaska, if we can we will.”<sup>6</sup>

Based on their answers, the Division originally denied Ms. S’s and Mr. S’s applications for the 2017 PFD on the grounds that they had failed to demonstrate that throughout 2016 they had the requisite intent return to Alaska indefinitely.<sup>7</sup> Both requested an informal appeal and stated that they do plan on returning to Alaska. In their informal appeal requests, Ms. S stated:

We don’t understand the purpose of a box to explain...We were honest in our answer, because we don’t know if we are going back to Alaska. We really want to. But is not to us anymore....We do deserve PFD 2016, we were there, we worked there, our taxes are there, our residency remains Alaska. The only reason we don’t get...PFD is because we are bring penalized of joining the Air Force....<sup>8</sup>

Mr. S provided a similar explanation, stating:

We do plan to come back to Alaska. My wife joined the air force. We had Alaska in our Dream List, but we got Colorado instead. Here I attach our

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<sup>3</sup> Testimony of Mr. S.

<sup>4</sup> Exhibit 1 pp. 1, 6.

<sup>5</sup> Id.

<sup>6</sup> Exhibit 1 pp. 2, 7.

<sup>7</sup> Exhibit 2 pp. 1, 5.

<sup>8</sup> Exhibit 4 p. 14.

evidence of my wife orders and Dream List... We both turn in our 2016 taxes to Alaska. We have our Alaska Driver license...”<sup>9</sup>

After carefully reviewing Ms. S’s and Mr. S’s explanations for checking the “no” box on their applications and their documentary submissions, the Division denied both of their informal appeals. The Division determined that Ms. S did not meet the definition of being a state resident because she did not prove an intent to return to Alaska and remain indefinitely after her service in the armed forces. The Division then denied Mr. S’s request on the grounds that his wife was not eligible for the PFD, and therefore, he was not eligible as a spouse accompanying an eligible recipient.<sup>10</sup> Ms. S and Mr. S appealed, requesting a formal hearing.

*B. Testimony at the Formal Hearing*

The formal hearing was held in this matter on March 30, 2018. Mr. S appeared telephonically and provided testimony representing himself and Ms. S. Mr. Scott appeared telephonically, representing the Division.

Mr. Scott stated the Division’s position. He acknowledged the difficult issue with determining subjective intent to remain an Alaska resident when dealing with military families. He described the standard the Division applies as attempting to determine whether the family has shown that they will return when they finish their tour of duty or when the military member retires. Mr. Scott noted that, based on Ms. S’s and Mr. S’s statements it appeared that they were stating a conditional desire to return—they would come back to Alaska if the military allowed them to return.<sup>11</sup>

Mr. S explained that he and Ms. S checked the “no” box on the PFD application because they were trying to be honest. Based on her career, they do not know if they can come back to Alaska. He also said he did not understand that the question was asking if they intend to return. Mr. S further explained that Alaska is their permanent home. Ms. S’s family lives in Alaska, and this is the state that they are connected to. Mr. S further noted

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<sup>9</sup> Exhibit 4 pp. 2, 8. Ms. S submitted an untimely request for informal appeal. However, any concern about the lateness of her filing as it might affect this formal appeal has been waived by the Division in light of some miscommunications. See Formal Position Statement p. 3.

<sup>10</sup> Exhibit 5.

<sup>11</sup> Statements of Mr. Scott at the hearing.

that all of their connections in 2016 were to Alaska. They paid taxes in Alaska, had licenses in Alaska, and he worked in Alaska.<sup>12</sup>

### **III. Discussion**

The applicant bears the burden of proving that the Division wrongly denied a PFD.<sup>13</sup> The issue for this appeal is whether Ms. S was a state resident as of the date of her application. To qualify as a state resident, since she was absent as of the date of her application in 2017 due to her active duty military service, Ms. S would have to show that she intends to return to Alaska and remain indefinitely after her military service is over.<sup>14</sup> As a spouse who is accompanying an active duty service member, Mr. S is eligible for the PFD if Ms. S is eligible. This is because his absence from Alaska is an excused absence only if he is accompanying an active duty service member who is, herself, eligible to receive the PFD.<sup>15</sup>

As the Division has noted, determining an individual's intent to return to Alaska and remain indefinitely is a difficult question. This is especially true when dealing with military families who may be gone for long periods of time before returning to establish a permanent home. The Division's reliance on the applicant giving some indication of when they will return, either after a certain number of years in the military or when they retire, is not unreasonable. Thus, prior to the formal hearing, the Division carefully reviewed the statements and documentation submitted by Ms. S and Mr. S, and determined that their statements appeared to express a hope that the military might allow them to return to Alaska, rather than a definite intent to return after military service. The Division is correct that, under the law, this would not be sufficient to find that Ms. S was an Alaska resident at the time of her application for the 2016 PFD.

However, I believe that Mr. S's testimony at the formal hearing clarified some of the confusion on this point. The hearing made clear that Ms. S and Mr. S checked the "no" box on the application in an effort to be honest about whether they would be allowed to return to Alaska despite putting Alaska on Ms. S's Dream list. I do not believe that they meant to imply that they did not intend to return to Alaska as their permanent home, but only that they did not know when they could return. Based on Mr. S's testimony concerning family

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<sup>12</sup> Testimony of Mr. S.

<sup>13</sup> 15 AAC 23.113(b)(1).

<sup>14</sup> See AS 43.005(a)

<sup>15</sup> Under AS 43.23.008(a)(3)(A) and (B) Mr. S's eligibility for the 2016 PFD is dependent on Ms. S's eligibility.

ties in Alaska, and their lack of ties anywhere else, I find that at the time of their applications for the 2017 PFD, both Ms. S and Mr. S did have the intent to keep Alaska as their chosen permanent residence. That is, that they did intend to return to Alaska and remain indefinitely at the time that they applied.<sup>16</sup>

The objective facts that support this conclusion are that Ms. S listed Alaska as her preferred posting. Her family is located in Alaska. Mr. S does work in Alaska, and the family does not appear to have ties to any other community. The contrary statements in the application reflect more a lack of understanding of the difference between whether they believed they would be able to return to Alaska in the near future or whether they intended to return at the end of Ms. S's military service.

#### **IV. Conclusion**

The decision of the Division to deny Ms. S's and Mr. S's applications for the 2017 PFD is reversed. Although a close question, I find that Ms. S did have the intent to return and remain indefinitely in Alaska at the time of her application for the 2017 PFD. Therefore, she is eligible to receive the PFD, and Mr. S is eligible as a spouse accompanying an eligible active duty military member.

Dated: April 4, 2018

*Signed*

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Karen L. Loeffler  
Administrative Law Judge

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<sup>16</sup> I am aware of the OAH decision provided by the Division as part of its Position Statement, *In the Matter of M.B.*, OAH 09-0130-PFD. I find that matter distinguishable in that it involved a student who asked that the Division's decision be overturned based on a written record only. The situation was somewhat analogous to the present situation in that the student's submissions suggested that he was "not sure" if he would be returning to Alaska. Unlike here, however, the student refused to testify and answer questions concerning his intent. Therefore, the OAH decision upheld the Division's finding that the individual, more likely than not, would move to wherever he found employment.

## 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 30<sup>th</sup> day of April, 2018.

By: Signed  
Signature  
Karen L. Loeffler  
Name  
Administrative Law Judge  
Title

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