

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

In the Matter of)	
)	
M X-C, M C & 2 MINORS)	OAH No. 18-1022-PFD
)	Agency Nos. 2018-037-1417/1416;
<hr style="width: 45%; margin-left: 0;"/>)	2018-054-4038/4116

DECISION AND ORDER

I. Introduction

M X-C, M C, and their two minor children D and B applied for the 2018 Permanent Fund Dividends (PFD). Their applications were denied because they had not been in Alaska for the entirety of the qualifying year, 2017. Ms. X-C, Mr. C, and the two minor children requested an informal appeal for not only the 2018 PFD but for the 2004 through 2017 PFDs. Those appeals were denied. A request for a formal hearing by correspondence followed.

The evidence in this matter shows that Ms. X-C and the two minor children applied for the 2004 PFD, were denied, and they did not timely appeal. They did not file for PFDs from 2005 – 2017. Accordingly, the denial of their request for the PFDs from 2004 through 2017 is upheld. Mr. C filed for the 2004 and 2008 PFDs, was denied for both, and did not timely appeal. He did not file for PFDs from 2005 – 2007 and 2009 – 2017. Accordingly, the denial of his request for the PFDs from 2004 – 2017 is upheld.

Ms. X-C, Mr. C, and the two minor children all applied for the 2018 PFD. Those applications were denied. The evidence shows that the Cs had not physically been in the state of Alaska since 2009, with the exception of one day in 2013. Even given Ms. X-C’s status as active military, and Mr. C’s status as the spouse of an active military member, they would still need to have maintained a physical presence within the state of Alaska of 30 days or more within the five years preceding 2017. Because they had not, they needed to reestablish their residency sometime in 2016, the year preceding the qualifying year, 2017, in order to be eligible for the 2018 PFD. They did not, and are hence ineligible for the 2018 PFD. For the children to be eligible, they would need to have eligible sponsors, and also been Alaska residents for PFD eligibility purposes. The lack of eligibility for their parents,

and their prolonged absence from the state, similarly make the children ineligible for the 2018 PFD.

II. Facts

Ms. X-C is and has been active military at all times relevant to this case. Mr. C is her spouse. They have two minor children, although one of those children, D, reached legal maturity after the 2018 PFD was applied for, and after this appeal process was started.¹ Ms. C was transferred to Alaska in December 2002, and her family accompanied her.² The Cs all applied for the 2004 PFD and were denied.³ They did not appeal that denial.

Mr. C also applied for the 2008 PFD and was denied.⁴ He did not appeal. Ms. X-C and the two minor children did not apply for the 2005 – 2017 PFDs. Mr. C did not apply for the 2005 – 2007 and the 2009 – 2017 PFDs.

The Cs all applied for the 2018 PFD. Ms. X-C was the sponsor for the children. The applications all provide that they left the state of Alaska in December 2009 and did not return to the state, with the exception of one day in 2013, until June 14, 2017.⁵ Mr. C also registered to vote in another state while absent from Alaska, and Ms. X-C and Mr. C acknowledged in their follow-up application paperwork having claimed a homestead exemption in another state.⁶

III. Discussion

A. *PFDs prior to 2018.*

1. PFDs applied for and denied.

All the Cs applied to the 2004 PFD and were denied. Mr. C also applied for the 2008 PFD and was denied. In order to receive a PFD for the years in which they were denied, they would have needed to file a timely appeal.⁷ None of them appealed the denial. Although Ms. C has argued that they were dissuaded from filing an appeal based on information provided them by Division personnel, there is nothing in the record showing

¹ D C's birthdate is 00/00/ 2000. The Cs' began this appeal process on June 1, 2018, when D C was still 17.

² Ex. 9, pp. 21, 23.

³ Ex. 11; Ex. 15.

⁴ Ex. 16, pp. 1 – 4.

⁵ Ms. X-C Ex. 1, p. 2.; Mr. C Ex. 1, p. 8; D C Ex. 1, p. 13; B C Ex. 1, p. 17.

⁶ Ex. 8, p. 1; Ex. 9, p. 16.

⁷ AS 43.23.015(g); 15 AAC 05.010(b)(5).

that they tried to file an appeal and had it rejected. As a result, because the Cs have the burden of proof in this matter, they cannot prevail on this point. Consequently, the denial of the applications in 2004 and 2008 is upheld.

2. PFDs not applied for.

Ms. X-C and the children did not apply for PFDs for 2005 through 2017. Mr. C did not apply for PFDs for 2005 through 2007 and 2009 through 2017. The PFD statutes are clear that in order to receive a PFD, one must first apply for it.⁸ The deadline for filing for a PFD is March 31 of the PFD year.⁹ Therefore, in order for the Cs to receive a PFD for the years in question, they would have need to apply for the PFD for each year by March 31 of that year. That time is long past. For instance, for the 2017 PFD, the Cs would have to applied for the PFD by March 31, 2017. Accordingly, the Cs are not entitled to receive these PFDs that they did not apply for.

B. The 2018 PFD

The PFD statutes normally provide that an applicant must be present in the state of Alaska, except for excused absences, during the entirety of the qualifying year. 2017 was the qualifying year for the 2018 PFD. Absence from the state while active duty military is an excused absence. However, even for someone who is active duty military, the PFD statutes provide that an applicant who has been absent from the “state for more than 180 days in each of the five preceding qualifying years” is presumed to no longer be a state resident for PFD eligibility purposes.¹⁰ Ms. X-C, her husband, and hence their children, are therefore each presumed to not have been Alaska residents, for PFD eligibility purposes, because they were not in the state for more than 180 days in each of the years of 2012 through 2016, the five years that preceded 2017 which was the qualifying year for the 2018 PFD. In order to rebut this presumption, the Cs must show by clear and convincing evidence not only that they are state residents, but that they were physically present within the State of Alaska for at “least 30 cumulative days” during the five years preceding the qualifying year.¹¹ This means that the Cs must have been physically present in Alaska for a total of 30 days or more in the years of 2012 through 2016. The only evidence in the record

⁸ AS 43.23.005(a)(1).

⁹ AS 43.23.011(a).

¹⁰ AS 43.23.008(d).

¹¹ AS 43.23.008(a)(3) and (d).

shows that the Cs were in Alaska only one day, in 2013, during the entire time from 2010 through 2016. While there is some question regarding whether the Cs continued to be legal Alaska residents, given that they claimed a homestead exemption in another state and Mr. C registered to vote in another state,¹² they are conclusively presumed to no longer be Alaska residents for PFD eligibility purposes because they were not physically present in the state of Alaska for at least 30 days in the time period from 2012 through 2016.

Consequently, in order to reestablish Alaska residency for PFD eligibility purposes, the Cs would need to have reestablished their residency in Alaska sometime prior to 2017, which was the qualifying year for the 2018 PFD.¹³ They did not. Ms. X-C was not transferred back to Alaska until June 14, 2017. This means that Ms. X-C is not eligible for the 2018 PFD. Mr. C is similarly not eligible. Because both of their children were minors at the time of the application for the 2018 PFD, they required an eligible sponsor.¹⁴ Both parents, who would be the sponsors for the children, were not eligible and it follows the children therefore not eligible. It should also be noted that because the children had only been in Alaska in their parents' company, they are also presumed to not be an Alaska resident due to their inability to satisfy the minimum physical presence requirement of 30 cumulative days during the requisite five-year period.

IV. Conclusion

Ms. X-C, Mr. C, and their two minor children were not eligible for the 2018 PFD because neither Ms. X-C, although active duty military personnel, or her husband, were physically present in the State of Alaska a minimum of 30 total days during 2012 through 2016. With regard to the PFDs from 2004 through 2017, none of the Cs were eligible for those PFDs because they either did not appeal the denials of the PFD application or they did not apply for them.

Dated: January 11, 2019.

¹² See AS 01.10.055(c); AS 43.23.095(7).

¹³ 15 AAC 23.143(c).

¹⁴ 15 AAC 23.113(b). There are two exceptions, which do not apply in this case. They are for a sponsor who would have otherwise been eligible if he or she had not filed timely, or who was ineligible due to a felony conviction or incarceration, or who had forfeited dividends under AS 43.23.035.

By: Signed
Name: Lawrence A. Pederson
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.]

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 5th day of February, 2019.

By: Signed
Name: Kathryn A. Swiderski
Title: Administrative Law Judge

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