

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

In the Matter of:)	
)	
K C, U S,)	
and B, T, &)	OAH No. 19-0213-PFD
E S (minors))	Agency Nos. 2018-026-9097
)	2018-026-9199
)	2018-026-9135
)	2018-026-9146
2018 Permanent Fund Dividends)	2018-026-9162

DECISION

I. Introduction

This case relates to the 2018 Permanent Fund Dividends (PFD) of Lt. Col. K C, an active-duty Air Force doctor, as well as her household consisting of her spouse U S and their three minor children. The Permanent Fund Dividend Division found the family ineligible, and it denied their applications initially and at the informal appeal level. The applicants requested a formal hearing, which was held before the undersigned on April 15, 2019. Although testimony was taken from Mr. S at the hearing, there were no disputes between the parties as to the underlying facts.

The uncontested facts show that Dr. C is unable to qualify for a 2018 PFD under the absolute, nondiscretionary minimum number of days that an individual must be present in Alaska over a five-year period to retain eligibility. The remainder of the family’s eligibility depends on her eligibility, and their applications must be denied as well.

II. Facts

Dr. C and her husband have been longtime Alaska residents, receiving the PFD yearly for several decades.¹ On June 1, 2012, they and their children moved out of the state because Dr. C received a military posting in Texas.² Dr. C was absent from the state for more than 180 days in that year and in each of the succeeding five years (2013, 2014, 2015, 2016, and 2017).³ The parties agree that in those five years preceding her application for a 2018 dividend, she returned to Alaska on two occasions: once in the summer of 2014 (5 days) and once in the summer of 2016 (7 days).⁴

¹ Ex. 1, pp. 5, 10.
² Ex. 9, pp. 1-2.
³ Ex. 9.
⁴ See Ex. 2, 10.

The total is 12 days over the five-year period. Throughout the period, she was allowably absent from Alaska performing her military service.

There was a change in law during this period. In 2013, the Alaska Legislature changed the rules regarding extended absences from Alaska, so that beginning with the 2014 dividend it became essential to have spent at least 30 days in the state over the last five years. Dr. C and Mr. S were not given notice of this change. Had they known of the change, they might have spent longer in the state at some point during the five years.⁵

Apart from the 30-day issue, Dr. C and Mr. S seem to maintain strong ties to the state. They have not established residency anywhere else.⁶

U S and the three children were absent from Alaska more than 180 days in 2017. The purpose of their absence was to accompany Dr. C at her duty station.⁷

III. Discussion

A. KC

To be eligible for a Permanent Fund Dividend, a person must be a state resident at the time of application and during the qualifying year for the dividend in question.⁸ In general, a person establishes residency “by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.”⁹ Once a resident, a person remains so even if absent from the state unless the person “establishes or claims residency” elsewhere or “performs other acts or is absent under circumstances that are inconsistent with the intent” to remain in Alaska and make a home here.¹⁰

These principles are the end of the residence inquiry for most purposes. “Residency” for PFD purposes is more complicated, however. Since a statutory change in 2013, the PFD eligibility statutes have provided as follows:

After an individual has been absent from the state for more than 180 days in each of the five preceding qualifying years, the department shall presume that the individual is no longer a state resident. The individual may rebut this presumption by providing clear and convincing evidence to the department that

⁵ S testimony.

⁶ Ex. 7, p. 4.

⁷ Ex. 9, p. 12.

⁸ AS 43.23.005(a).

⁹ AS 01.10.055(a).

¹⁰ AS 01.10.055(c).

- (1) the individual was physically present in the state for at least 30 cumulative days during the past five years; *and*
- (2) the individual is a state resident as defined in [the general definition of residency quoted above].¹¹

Since Dr. C was absent more than 180 days in 2013, 2014, 2015, 2016, and 2017, this statute requires the Department of Revenue to presume her to be a nonresident in 2018, unless she can show that she was present for 30 or more cumulative days during that span of years. Since she cannot do that, the presumption stands and she is not a “state resident” for PFD purposes.¹²

B. U S and Children

To be eligible for a dividend, during the qualifying year an individual must be “physically present in the state or, if absent, . . . absent only as allowed in AS 43.23.008.¹³ The qualifying year for the 2018 dividend was 2017.¹⁴ In 2017, Mr. S and the three children were absent from Alaska for the whole year. The only allowable absence in AS 43.23.008 on which they can potentially rely is the one in AS 43.23.008(a)(3), which preserves eligibility for a spouse or minor dependent who is accompanying “an individual who is (A) serving on active duty as a member of the armed forces of the United States; and (B) eligible for a current year dividend” (in this context, “current year” means the dividend year at issue, or 2018¹⁵). Since Dr. C is not “eligible for a current year dividend,” her family cannot use the allowable absence for accompanying her.

IV. Conclusion

Because of extended absence from the state, the Legislature intended that applicants in the position of Lt. Col. C would not be eligible for a 2018 PFD, and that an accompanying spouse or dependents would likewise be ineligible. The Department of Revenue has been given no authority to relax the rules that make these individuals ineligible. The decision of the Permanent

¹¹ AS 43.23.008(d) (ch. 33, § 2 SLA 2013) (italics added).

¹² *Jones v. State, Dep’t of Revenue*, Case No. 3AN-16-08636CI (Alaska Superior Ct. 2017) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5729>) (appeal pending); see also *In re D.J.*, OAH No. 15-0737-PFD (Dep’t of Revenue 2015) (confirming that presumption is un rebuttable for individuals who do not have the requisite 30 days; explaining the statutory history that traded the new system for a prior one that had been more problematic for long-term military families).

¹³ AS 43.23.005(a)(6).

¹⁴ AS 43.23.095(6).

¹⁵ *In re Hoffman*, OAH No. 15-1382-PFD (Comm’r of Revenue 2016).

Fund Dividend Division to deny the applications of K C, U S, and their three children is
AFFIRMED.

DATED this 16th day of April, 2019.

By: Signed
Christopher Kennedy
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 and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of May, 2019.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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