

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

In the Matter of)
)
D A. F (minor))
) OAH No. 19-0383-PFD
2018 Permanent Fund Dividend)

DECISION

I. Introduction

Through his mother as sponsor, high school student D F appeals the denial of his 2018 Permanent Fund Dividend (PFD). D and his mother moved to Seattle before the end of 2016. After a time, D moved back to Alaska and lived with his father, but it was his nonresident mother who applied on his behalf for the 2018 PFD. The Permanent Fund Dividend Division denied the application because she was not an eligible sponsor and because of incomplete information.

D’s mother requested a formal hearing by correspondence alone, but did not send in any further material in support of the appeal. Based on the documentary record, it is clear that D’s sponsor was ineligible to serve in that role. The Division’s denial will be affirmed.

II. Facts

D F is a young man who grew up in Alaska and was paid a dividend every year from his birth until 2017.¹ M F is his mother. She and D’s father apparently have not lived together since 2016 or before.² D attended Anchorage schools from kindergarten until the beginning of his tenth grade year.³

On December 10, 2016, M F moved to Seattle with her children. D was withdrawn from tenth grade in the Anchorage School District and moved with her, apparently attending school in the new location.⁴ For Ms. F, the move was, or became, indefinite; it ended her eligibility for the PFD and she did not even apply for one in 2018.⁵ She concedes that she was ineligible.⁶

In February of 2017 D moved back to Anchorage, re-enrolling in the Anchorage schools on the 16th of that month.⁷ He then lived with his father in Anchorage for the rest of 2017 and the first nine months of 2018.⁸

¹ Ex. 7.
² Ex. 8, p. 2.
³ Ex. 8, pp. 3-4.
⁴ *Id.*; Ex. 9.
⁵ She did apply for and receive a 2017 dividend.
⁶ Ex. 3, p. 2.
⁷ Ex. 8.
⁸ *Id.*

While D was living with his father, M F completed a 2018 PFD application on his behalf. She filed it on March 15, 2018.⁹ After the application was denied, an informal appeal was submitted, signed not by Ms. F but instead by B F, D’s father.¹⁰ Despite this irregularity, the Division processed the appeal.

The formal appeal to this office was opened on May 1, 2019, initiated on this occasion by M F.¹¹ By notice dated May 2, 2019, Ms. F was given until June 3, 2019 to send any additional documents or correspondence for consideration in her son’s formal appeal. The Division was given the same deadline. Both were given until June 17, 2019 to respond to any documents received from the other. The Division filed a position statement. Nothing was filed on D’s behalf on either of these two opportunities.

III. Discussion

In this appeal, D (through his sponsor, M F) has the burden of showing that the denial of his 2018 PFD application was in error.¹² Since Ms. F submitted no evidence or argument during the formal appeal, the question of whether the burden was met is made on the written record provided by the PFD division.¹³

A child who is not in state custody must apply for a dividend through a sponsor.¹⁴ The sponsor must be eligible for a dividend.¹⁵ Ms. F concedes that she had moved to Seattle and was no longer eligible for a dividend in 2018. Thus, she could not be a valid sponsor. Moreover, a child’s sponsor must, at the time of the application, have “lawful and physical custody” of the child. Ms. F filed D’s application on March 15, 2018, at a time when he was in custody of his father. This is a second basis on which she is an inappropriate sponsor.

It is possible that the problem with sponsorship could have been cleared up had the F family participated in their own appeal. When a child does not have an eligible sponsor, an eligible substitute sponsor can be approved after-the-fact in some circumstances.¹⁶ Conceivably, B F—who

⁹ Ex. 1, p. 1.

¹⁰ Ex. 3, p. 1.

¹¹ Ex. 8, p. 1.

¹² 15 AAC 05.030(h).

¹³ See, e.g., *In re D.N.*, OAH Case No. 08-0563-PFD, at 1 & n.1 (Comm’r of Revenue 2009) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5282>).

¹⁴ 15 AAC 23.113(c).

¹⁵ 15 AAC 23.113(b)(1) and (d).

¹⁶ 15 AAC 23.113(h).

had custody of D during the 2018 application period—could have stepped in as sponsor. However, this could not be explored.¹⁷

There is potentially a more fundamental problem with D’s eligibility, in any event. In order to qualify for a Permanent Fund Dividend in 2018, the applicant had to have been a legal resident of Alaska throughout the qualifying year.¹⁸ The qualifying year for the 2018 dividend was 2017.¹⁹

To be a legal resident of Alaska, a person must have “the intent to remain in the state indefinitely and to make a home in the state.”²⁰ For a child who is in the legal and physical custody of a parent, this intent is governed by the intent of that parent.²¹ So far as there is evidence in this case, it suggests that M F had sole legal and physical custody of D for the first six weeks of 2017, and that at that time she had “moved” to Washington State without any intent to make a home in Alaska. This would indicate that she was no longer an Alaska resident at that time, and that D had likewise lost his Alaska residency. He may have become an Alaska resident again in mid-February of the qualifying year when he moved back to live with his father, but that would be too late to save his eligibility for the following year’s dividend. Because of the limited record, these facts will not be deemed to be conclusively established should D reapply by the method discussed in footnote 17. However, they are mentioned here to better inform any decision to reapply.

IV. Conclusion

Because he had no eligible sponsor, D F cannot receive a 2018 PFD on the basis of the application that was filed on his behalf. The decision of the PFD Division to deny his 2018 application is affirmed.

DATED this 20th day of June, 2019.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹⁷ If D actually met the eligibility requirements for a 2018 dividend (which is questionable, as noted later in this decision), and if the only reason he did not receive a dividend was the sponsorship problem noted in this decision coupled with his father’s failure to apply, he may be eligible to apply again. This would be done directly, with no sponsor, and would have to be done between his 18th and 20th birthdays. For the rules pertaining to such an application, see 15 AAC 23.133(b), (c).

¹⁸ AS 43.23.005(a)(3).

¹⁹ AS 43.23.095(6).

²⁰ AS 01.10.055(a), (c).

²¹ E.g., *In re R.E.*, OAH Case No. 06-0385-PFD (Comm’r of Revenue 2006), at 4 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5154>).

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 16th day of July, 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.]