

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

In the Matter of)	
)	
S B)	
)	
<u>2018 Permanent Fund Dividend</u>)	OAH No. 19-0570-PFD Agency No. 2018-046-5073

DECISION

I. Introduction

S B, a first-time applicant, appeals the denial of his 2018 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division denied the application for a variety of reasons, including failure to provide required information and documentation as well as failure to prove residency.

Mr. B 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 he has never provided a document that all first-time applicants must supply. The Division’s denial will be affirmed on that basis. There is no need to make a determination regarding residency.

II. Facts

S B is a gentleman in his late thirties who was apparently born in Iowa.¹ He reports that he moved to Alaska on April 3, 2016.² He was arrested on May 18, 2016, and has been in custody since that time.³ He is currently held at a Correctional Center in City A.⁴

Mr. B has not established the kinds of ties to Alaska normally established by people who are coming to settle in the state, such as purchasing or renting a home, getting a job, or getting a driver’s license.⁵ It is fair to surmise, however, that his incarceration may have prevented him from pursuing those ties.⁶

When Mr. B applied for a PFD on February 17, 2018, he omitted much of the required information.⁷ With repeated prompting from the Division, these deficiencies were mostly corrected over the next year and a half.⁸ However, Mr. B never submitted a copy of a birth certificate or passport. This crucial item was requested from him, first, in the Adult Supplemental Schedule that

¹ Ex. 9, p. 4.

² Ex. 1, p. 3.

³ *Id.*

⁴ Ex. 9, p. 5.

⁵ Ex. 9, p. 7.

⁶ Mr. B seems to suggest this in a notation on his 2018 Adult Supplemental Schedule. *See id.*

⁷ See Ex. 1.

⁸ These supplementations can be seen throughout the exhibits. Some of the paperwork, such as the Verifiers Designation, is still not complete, but it may be substantially complete in light of the circumstances.

he should have submitted with his original application;⁹ second, in a letter from the Division on August 10, 2019;¹⁰ third, in a denial notice dated December 28, 2018;¹¹ and fourth, in an Informal Appeal Decision dated May 29, 2019.¹²

The formal appeal to this office was opened on June 19, 2019.¹³ By notice dated July 1, 2019, Mr. B was given until July 31, 2019 to send any additional documents or correspondence for consideration in his formal appeal. The Division was given the same deadline. Both were given until August 14, 2019 to respond to any documents received from the other. The Division filed a position statement. Mr. B submitted nothing on either of these two opportunities.

III. Discussion

In this appeal, Mr. B has the burden of showing that the denial of his 2018 PFD application was in error.¹⁴ Since he 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.¹⁵

There are special requirements for first-time PFD applicants. For Mr. B, who reports that he was born in Iowa, the law includes the following requirement:

An individual born outside Alaska who is filing for a dividend for the first time must submit a certified copy of the individual's birth certificate issued by the official agency of the other state or country responsible for recording births, or must submit an original passport or an original United States naturalization certificate.¹⁶

The record shows that Mr. B has never done this, in spite of multiple reminders and opportunities to do so. This means his application has never been completed and he cannot receive a dividend.

There is potentially a more fundamental problem with Mr. B's eligibility, in any event. In order to qualify for a PFD in 2018, the applicant had to have been a legal resident of Alaska throughout the qualifying year.¹⁷ The qualifying year for the 2018 dividend was 2017.¹⁸ Thus, prior to the start of 2017 Mr. B had to have become a legal resident of Alaska.

⁹ Ex. 9, p. 3.

¹⁰ Ex. 3, p. 2-3.

¹¹ Ex. 5, p. 2

¹² Ex. 8, p. 2.

¹³ Ex. 11.

¹⁴ 15 AAC 05.030(h).

¹⁵ 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>); 15 AAC 05.030(j).

¹⁶ 15 AAC 23.103(d).

¹⁷ AS 43.23.005(a)(3).

¹⁸ AS 43.23.295(6).

To become a legal resident of Alaska, a person must establish 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.”¹⁹ It is unlikely that a person can establish residency while being held against his or her will in jail. However, Mr. B seems to have been present in Alaska for about six weeks before he was arrested, and it is conceivable that he established residency during that time. He certainly has not proven that this is so, but given the sparseness of the record, it seems best not to make a binding decision on the issue. However, if he submits a complete application in a future year, Mr. B should know that he will still have to prove that he has been in Alaska, not just as a visitor or an involuntary prisoner, but as a person putting down roots and making a home here.

IV. Conclusion

Because he never supplied the required birth certificate or passport to complete his first PFD application, S B cannot receive a 2018 PFD. The decision of the PFD Division to deny his 2018 application is affirmed.

DATED this 16th day of September, 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 11th day of October, 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.]

¹⁹ AS 01.10.055(a).