

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

In the Matter of)	
)	
L P; and N, O, K, F, P, C, J, T and D)	
P (minors))	
)	OAH No. 20-0350-PFD
2019 Permanent Fund Dividends)	Agency Nos. 2019-004-5625, 5654,
)	5730, 5753, 5773, 5810, 5831, 5856,
)	5870, and 5893
_____)	

DECISION

I. Introduction

Mrs. L P timely filed electronic 2019 Permanent Fund Dividend (“PFD”) applications on behalf of herself and her nine minor children, N, O, K, F, P, C, J, T, and D P (collectively referred to as the “P Applications”). The applications were filed on January 10, 2019. Three days after the applications were filed, Mrs. P and her children moved from Alaska to State A to be closer to her husband and the children’s father, Mr. L P. Mr. P had left Alaska and been employed in State A since August 2018.

The P Applications were denied by the Permanent Fund Dividend Division (“Division”) because, among other things, it found that the Ps had permanently moved from Alaska for reasons not allowed by the PFD statutes and regulations, had failed to demonstrate the requisite intent to remain Alaska residents indefinitely through the date of the applications, and were maintaining a principal home outside of Alaska. The denial letters specified that for the denials to be reversed, within 30 days, the Division must be provided a request for informal appeal and an itemized list of additional supporting documentation.

The Division did not receive informal appeal requests from Mrs. P until 129 days after the deadline. At that time, Mrs. P filed requests for informal appeals and submitted detailed narrative descriptions regarding the circumstances by which her and her children left Alaska and their subsequent return to Alaska. She also provided additional supporting documentation. The Division denied the Ps’ informal appeal requests because they were untimely.

Mrs. P subsequently filed formal hearing requests and provided further narrative and explanatory documentation. Before the hearing, the Division filed a motion to dismiss the Ps’ appeal on the basis that it was untimely.

A telephonic hearing occurred on May 12, 2020. Both Mrs. P and the Division,

represented by Peter Scott, participated at the hearing and the issues were explored. For the reasons set forth below, this decision rejects the Division’s untimeliness determination but affirms the Division’s denial of the Ps’ 2019 PFD applications.

II. Facts

Mr. P and his family moved to Alaska in the late fall, early winter of 2013 after he accepted an offer of employment in Anchorage.¹ The couple’s children currently range in age from the oldest, F age 13, to the youngest, D age three.² Until the current applications, Mrs. P had received dividends since 2015 and her children, with minor exceptions, received dividends beginning at least as of 2015 or from birth.³

When the Anchorage store closed where Mr. P had been employed, he moved to State A in August 2018⁴ to accept a new job.⁵ As early as November 2018, Mrs. P began making plans to join her husband with her children in State A so that the family could be reunited.⁶ Mrs. P filed electronic 2019 PFD applications on behalf of herself and her children on January 10, 2019.⁷ Three days later, Mrs. P and her children left Alaska, moving to State A joining Mr. P.⁸

The Division was then contacted by the United States Postal Service and advised that Mrs. P had submitted a Change of Address form on behalf of the family, effective January 2019, indicating a new address in City A, State A.⁹ This change of address request prompted an audit letter to be sent by the Division to Mrs. P, asking her to provide certain additional information and documentation.¹⁰ In timely responding to the audit letter, Mrs. P confirmed that her address was in fact in City A, State A and further, that the reason for her change of address was because she “was moving” and needed her mail forwarded.¹¹ She also confirmed that she knew she was moving as of November 2018 and in fact moved on January 13, 2019.¹²

Based on this information, on May 24, 2019, the Division denied the P Applications.¹³ It

¹ Ex. 10.
² Ex. 1.
³ Ex. 1, pp. 5, 9, 13, 17, 21, 25, 29, 33, 37, 41.
⁴ Ex. 4, p. 3.
⁵ Ex. 3, p. 4.
⁶ Ex. 4, p. 3.
⁷ Ex. 1.
⁸ Testimony of Mrs. P; Ex. 3, p. 4.
⁹ Testimony of Peter Scott; Ex. 3, p. 3.
¹⁰ Ex. 3, p. 3.
¹¹ Ex. 3, pp. 3-4.
¹² Ex. 3, p. 4.
¹³ Ex. 2.

did so on the basis that the Ps had permanently moved from Alaska for reasons not allowed by the PFD statutes and regulations, had failed to demonstrate the requisite intent to remain Alaska residents indefinitely through the date of the applications, and were maintaining a principal home outside of Alaska. The notice of denial letter specified that to have the denials reversed, the Division must be provided a request for informal appeal, together with five separate itemized items of “proof.”¹⁴ The notice of denial indicated that Mrs. P was required to take all of these steps by June 23, 2019.¹⁵

Mrs. P and her family moved back to Alaska on October 12, 2019.¹⁶ After doing so, she submitted to the Division requests for informal appeal. They were received by the Division on October 30, 2019, or 129 days past the deadline.¹⁷ In submitting the requests, Mrs. P supplied significant amounts of supporting documents, including school enrollment records, banking information, utility records and other supporting verification documents.¹⁸

The Ps’ informal appeal requests were denied by the Division on the basis that they were untimely and no reasonable cause was demonstrated for their lack of timeliness.¹⁹ The requests for the P children were further denied because of not having an eligible sponsor.²⁰

Mrs. P then timely submitted a formal hearing request on behalf of her and her children.²¹ In doing so, she provided a detailed narrative explanation regarding the timeliness issue and why she believed good cause existed regarding the 129 day delay in making the requests.²² Specially, and among other things, Mrs. P indicated that:

My reason for not filing my appeal prior to the June 23rd deadline is easy to understand when considered in the following light. *To explain, these are the proofs we were required to give in order to file an appeal.*

- 1: Proof L was absent from Alaska for an allowable reason.
- 2: Proof L met the definition of a state resident as it applies to the PFD program during the entire qualifying year and through the date of application.
- 3: Proof L took no actions inconsistent with remaining an Alaska

¹⁴ Ex. 2, p. 2 (emphasis in original).

¹⁵ Ex. 2, p. 2.

¹⁶ Ex. 4, p. 3.

¹⁷ Ex. 4; Ex. 5, p. 36.

¹⁸ Exs. 4, 5.

¹⁹ Ex. 6.

²⁰ Ex. 6, pp. 4-39.

²¹ Ex. 8.

²² Ex. 8, pp. 5-8.

resident indefinitely throughout the date of application.

- 4: Proof L demonstrated the requisite intent to return to Alaska to remain indefinitely during the entire absence.
- 5: Proof that L did not maintain a principal home outside of Alaska.

...

To summarize, I was unable to file an appeal by June 23rd because the representatives of the PFD Division had either accidentally or *intentionally used language that made it clear to me that my family's current period of indecision, and not our intent during the qualifying year would disqualify me for the 2019 PFD. I was unable to appeal earlier than I did because they had made it clear that I would have to show proof of intent, which I didn't feel like I could adequately do until I am my family returned to Alaska.*²³

After Mrs. P submitted the formal hearing request, the Division filed hearing exhibits and a motion to dismiss the appeal request.²⁴ On the date of the hearing on May 12, 2020, Mrs. P also filed a response to the motion to dismiss.²⁵

III. Discussion

In analyzing the P Applications, two issues exist. First, is there reasonable cause to justify accepting the request for informal appeal 129 days after the deadline? Second, has Mrs. P sufficiently demonstrated that her and her children possessed the intent to remain Alaska residents throughout the qualifying year and until the applications were filed? Although Mrs. P and her children prevail on the first issue, they fail on the second.

A. Reasonable Cause for Late Appeal

The Division's initial notice of denial to Mrs. P is flawed in the manner it notifies her of the ability to request an informal appeal. Because of this, reasonable cause exists for the late filed appeal request.

Per 15 AAC 05.010(b)(5), a request for appeal must be filed within 30 days of a notice of disallowance unless reasonable cause for the failure to do so is shown.²⁶ This deadline is waivable by the administrative law judge on the similar but perhaps not identical basis that

²³ Ex. 8, pp. 5-8 (emphasis added).

²⁴ Formal Hearing Exhibit Letter and Motion to Dismiss Appeal Request, dated May 5, 2020.

²⁵ Response to DOR Motion to Dismiss Appeal Request, received by the Office of Administrative Hearings on May 12, 2020.

²⁶ 15 AAC 05.010(b)(5).

adhering to it would “work an injustice.”²⁷ As both the Division and Mrs. P have also referenced, “[i]n general, waivers have been available where confusing circumstances, particularly if contributed to by the Division, were a factor in the delay in starting an appeal...”²⁸ Finally, though not addressing adherence to or waiver of deadlines, an Alaska statute specifies what must be done to appeal a decision from the Division regarding PFD eligibility.

Specifically, AS 43.23.015(g) provides:

[i]f an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may, upon payment of a \$25 appeal fee, request the department to review its decision.²⁹

The law further provides that when interpreting statutes such as this which allow for the review of decisions, such statutes must be construed with strict fidelity to their terms.³⁰

Here, the P Applications were denied by the Division on May 24, 2019.³¹ Mrs. P did not request informal appeals of the denials until October 30, 2019, or 129 days past the deadline.³² The question is whether reasonable cause exists for this tardy response.

Based on a plain reading of the appeal statute, all an applicant must do to secure their right to appeal is make a request and submit the appeal fee.³³ However, that is not what the Division's notice of denial suggests. Instead, it instructs that:

If either the facts or the application of the law are incorrect, you have 30 days from the date of this letter to file a Request for informal Appeal.

To have this denial reversed, **all** of the following and a **completed and valid Request for Informal Appeal form must be submitted or postmarked by June 23, 2019.**

- Proof L was absent from Alaska for an allowable reason.
- Proof L met the definition of a state resident as it applies to the PFD program during the entire qualifying year and through the date of

²⁷ 15 AAC 05.030(k). The regulation appears to delegate the decision to the ALJ hearing the case.

²⁸ *In re D.E.*, OAH No. 16-1348-PFD (Commissioner of Revenue 2017)(available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5751>).

²⁹ AS 43.23.015(g).

³⁰ *Stone v. I.N.S.*, 514 U.S. 386 (1995).

³¹ Ex. 2.

³² Ex. 4; Ex. 5, p. 36.

³³ AS 43.23.015(g).

application.

- Proof L took no actions inconsistent with remaining an Alaska resident indefinitely throughout the date of application.
- Proof L demonstrated the requisite intent to return to Alaska to remain indefinitely during the entire absence.
- Proof that L did not maintain a principal home outside of Alaska.³⁴

The problem with the Division’s notice is that it attempts to link an applicant’s right to appeal with 1) providing further proof; and 2) the need for an applicant to demonstrate that the facts or the law set forth in the denial are incorrect.

The notice tells the applicant that the material identified must be assembled and submitted “within 30 days of the date of this letter.”³⁵ However, the appeal statute does not make an applicant’s right to appeal contingent on the submission of evidence.³⁶ Instead, all that an applicant is required to do is to pay the necessary fee and submit an appeal request.³⁷ Likewise, the appeal regulation makes no mention of having to submit proof or argument along with the hearing request.

Also, contrary to what the Division’s notice suggests, even where the Division is correct in its recitation of the law and facts, an applicant still possesses a right to appeal. And, in such a circumstance, an applicant may even prevail on an appeal, because the Division might have erred in its analysis or its application of the law to the facts.

Finally, and as is evident here, the Division’s notice of denial did in fact cause confusion and delay by Mrs. P.³⁸ Therefore, this is not an instance where it is suspected that the notice of denial might have discouraged an applicant from timely requesting an appeal. Instead, it is quite evident that in this instance, the language contained in the Division’s notice of denial was likely responsible for the delay at issue.

Therefore, the Division’s denial letter is inaccurate in that an applicant may well construe it as requiring more to initiate an appeal than is practically or legally required, including by the Alaska Legislature in its creation of AS 43.23.015(g). Requiring these additional items at the

³⁴ Ex. 2, p. 2 (emphasis in original).

³⁵ Ex. 2, p. 2.

³⁶ AS 43.23.015(g).

³⁷ AS 43.23.015(g).

³⁸ Ex. 8, pp. 5-8.

outset has no legal basis and acts as an improper deterrent to appeals.

Because the Division's denial letter misinformed Mrs. P regarding what is required to perfect her appeal rights, I find that enforcement of the deadline would, more likely than not, work an injustice. Accordingly, the Division's motion to dismiss Mrs. P's late filed appeal requests on behalf of her and her children is denied and the case will be considered on the merits.

B. Residency

To prevail on the substantive issue in this case, Mrs. P must demonstrate that she intended to remain indefinitely in Alaska during all of 2018 and up until the date of application. On the facts presented here, she fails to do so.

In order to qualify for a PFD, a person must be an Alaska resident both on the date of the application³⁹ and during the entire qualifying year.⁴⁰ An Alaska resident is someone who is in the state with the intent to remain indefinitely, or someone who, having previously established residency, is absent but intends to return to the state to remain indefinitely.⁴¹ As the individual challenging the Division's decision, Mrs. P bears the burden of proof.⁴² 15 AAC 23.143(h) is particularly applicable to this analysis. It provides that "[a]n individual who on the date of application knows the individual will be moving from Alaska at a specific time to a specific destination for a reason other than one allowed by AS 43.23.008(a) does not have the intent to remain indefinitely in Alaska and is not eligible for a dividend."

In this instance, there are numerous facts which lead to the conclusion that, at the time Mrs. P submitted the P Applications, she did not possess the requisite intent to remain in Alaska indefinitely. First, her husband and the family patriarch had moved to State A for work in August 2018 and remained there through the date of the applications. Mrs. P herself indicated that the relocation outside of Alaska by her and her children was motivated by a desire to be closer to her husband and to reunite the family.

Second, there was no indication given that Mr. P's job was temporary or of limited duration. Mrs. P did contend that her husband passed up a promotion opportunity that would have resulted in the move becoming more permanent.⁴³ However, there is nothing which

³⁹ AS 43.23.005(2).

⁴⁰ AS 43.23.005(3).

⁴¹ AS 43.23.295(7).

⁴² 15 AAC 05.030(h).

⁴³ Ex. 4, p. 3.

suggests that her husband's job, when taken, was intended to be limited or had a set end-date. Further, Mrs. P supplied no conclusive evidence regarding at what point in time Mr. P passed up the promotion opportunity.⁴⁴ Obviously, had this occurred before the P Applications were submitted, perhaps this fact might have carried some weight. However, if the opportunity was declined *after* the P Applications were submitted, it has no bearing. This is because it is not determinative of anything during the relevant timeframe.⁴⁵

Third, had the relocation simply been temporary, there was little need for Mrs. P and her nine children to relocate to City A, State A for a period of nearly 10 months. While it is certainly understandable that Mr. P would want to spend time with his wife and children, this could have been accomplished much more cheaply and efficiently by him visiting the family at their home in Alaska as opposed to the family moving to State A to be with him. It is important to note that this fact, in and of itself, is not determinative. Obviously, this was a personal choice for the Ps to make. Nevertheless, because the Ps relocated the entire family to State A when Mr. P moved there to work, it is yet another strong indication that Mrs. P lacked the requisite intent, at the time the P Applications were submitted, to remain in Alaska indefinitely.

Fourth, Mrs. P has indicated that her children continued to be enrolled in school through a homeschool option.⁴⁶ Nevertheless, it is noteworthy that while perhaps enrolled in Alaska homeschooling charter programs during this period, the P children were not in Alaska from the time they left with Mrs. P on January 13, 2019 until they returned to Alaska on October 12, 2019. As Mrs. P confirmed in her testimony at the hearing, the children accompanied her during this entire period.⁴⁷ Therefore, the fact that the P children were enrolled in Alaska charter schools during this period is of little consequence considering they were physically present in State A the entire time.

Fifth, on the audit questionnaire, Mrs. P was asked whether she had moved from Alaska. She responded, "YES." She was asked to identify on what date she knew she was moving. She responded, "Nov, 2018." She was asked to identify when she actually moved. She responded,

⁴⁴ There is some evidence, although not conclusive, that the promotion opportunity may have been for a promotion occurring between April and August 2019. *See* Response to DOR Motion to Dismiss Appeal Request, received by the Office of Administrative Hearings on May 12, 2020, at p. 4.

⁴⁵ Again, the relevant period being throughout the qualifying year up and until the P Applications were submitted on January 10, 2019.

⁴⁶ Ex. 5, pp. 21-32.

⁴⁷ Testimony of Mrs. P.

“1/13/2019.” She was asked why she changed her address with the United States Postal Service. She responded, “[b]ecause I was moving and needed my mail forwarded.” She was asked regarding what she did with the family’s household belongings. She indicated that she, “[t]ook them to State A. Some [were] left behind at the home we own in Alaska.” Finally, she was asked whether she planned on returning to remain in Alaska indefinitely. She responded, “maybe.”⁴⁸

In addition to all of the above, Mrs. P has also maintained both at the hearing as well as in her explanatory narrative descriptions and other documentation provided to the Division that it was always the family’s intent to return to Alaska. She cites many facts in support of this, including that the family continued to own their home in Alaska, they had not purchased a home in State A, they left some belongings behind in Alaska, the children continued to be enrolled in Alaska schools, her husband declined the promotion opportunity that would have made his job outside of Alaska more permanent and her desire to be close to her ailing father.

Nevertheless, when all of the evidence and testimony is considered in its totality, there is little doubt that, from November 2018 until the P Applications were submitted on January 20, 2019, Mrs. P did not possess the requisite intent to remain in Alaska indefinitely. Instead, it is credible that the family made the decision to move from Alaska and, at least during this limited timeframe, and with the understanding that they might not permanently return. However, as frequently occurs in life, plans often change. It was likely only sometime *after* January 10, 2019, that circumstances changed whereby the family made the decision to permanently return to Alaska, and in fact did so, on October 12, 2019. However, this change of plans does not negate the family’s lack of intent to remain indefinitely in Alaska during the period from November 2018 until January 10, 2019. As 15 AAC 23.143(h) dictates, an individual who, *on the date of application* knows they will be moving at a specific time and for a reason other than those allowed by AS 43.23.008(a), does not have the intent to remain indefinitely in Alaska and is not eligible for a dividend.⁴⁹

Taken as a whole, there has been insufficient evidence to suggest that, on the date of the P Applications, Mrs. P possessed the intent to remain indefinitely in Alaska. Instead, as of that date, the evidence indicates that there was the intent to move from Alaska for reasons other than

⁴⁸ Ex. 3.

⁴⁹ Emphasis added.

those allowed by statute.

IV. Conclusion

The Division’s motion to dismiss the appeal on grounds of untimeliness is DENIED. As discussed, applying the appeal deadline in these circumstances would work an injustice because the Division’s notice of appeal rights was inaccurate. However, the Division’s decision to deny 2019 dividends to Mrs. P and her children is AFFIRMED since it has not been demonstrated that they possessed the requisite intent to remain in Alaska indefinitely during the qualifying year or at the time the P Applications were filed.

DATED this 2nd day of June, 2020.

By: Signed
Z. Kent Sullivan
Administrative Law Judge

Adoption

This Decision 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of June, 2020.

By: Signed
Signature
Z. Kent Sullivan
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.]