

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

In the Matter of)	
)	OAH No. 20-0772-PFD
L T)	Agency No. 2019-061-1556
)	
<u>2019 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

L T’s application for a 2019 permanent fund dividend (PFD) was denied because he had failed to take concrete steps to establish his Alaska residency other than being physically present in the state. Following an unsuccessful informal appeal, Mr. T requested a formal hearing by correspondence.

The deadline for the parties to submit a written statement or response was November 5, 2020. The Permanent Fund Dividend Division’s (Division) position statement was timely received on October 14, 2020. Mr. T did not submit any initial statement, nor did he provide a response to the Division’s position statement.

The evidence shows that Mr. T arrived in Alaska in September 2015. He was arrested in February 2016 and has been incarcerated continuously since then pending trial in his criminal case. During the time between his arrival in Alaska and his arrest, he did not take any substantive steps to establish residency such as registering a vehicle, obtaining an Alaska driver’s license, registering to vote, obtaining a job, or renting or purchasing a home. Nor did he take any similar steps following his incarceration. As a result, despite the fact that he has been in the state continuously since September 2015, he has not established that he is an Alaska resident for PFD eligibility purposes. The Division’s denial of his 2019 PFD application is AFFIRMED.

II. Facts

Mr. T arrived in Alaska in September 2015. He was arrested in February of 2016, criminally charged, and has been in prison since, although his case has yet to go to trial. In the interim between his arrival in Alaska and his arrest, he used rental cars for transportation and stayed in hotels. He did not obtain an Alaska driver’s license, register to vote, register a vehicle, rent or purchase a home, or obtain a job.

Mr. T applied for the 2019 PFD. His application stated that his residency in Alaska began on September 20, 2015, that he had not moved his household belongings to Alaska, purchased or rented a place to live in Alaska, or obtained a job in Alaska.¹ After he applied, he was asked to supply two individuals who could verify his Alaska residency.² He supplied two names: a Superior Court judge who had dealt with a portion of his criminal case and the superintendent of the jail where he was incarcerated.³

The Division denied Mr. T’s application because he did not act to “establish [his] Alaska residency, for PFD purposes, before January 1, 2018.”⁴ Mr. T filed a request for informal appeal. His informal appeal request stated that he had the intent to remain in Alaska and that he had rented rooms from motels and hotels while he looked for work and a home before he was arrested.⁵

Mr. T’s informal appeal was denied. The reasoning for the denial was that he did not prove that he had established his Alaskan residency for PFD purposes before January 1, 2018 and that he did not establish that he was an Alaskan resident, for PFD purposes, during the entire year of 2018.⁶

Mr. T subsequently filed this formal appeal, arguing that he was precluded due to his incarceration from supplying any proof of his Alaska residency, that he had been physically present in the state for all of 2018, and that he intended to make Alaska his home.⁷

III. Discussion

In formal hearings regarding PFDs, the individual challenging the Division’s initial decision “has the burden of proving that the action . . . is incorrect.”⁸ This has to be proven by the preponderance of the evidence,⁹ meaning that Mr. T must show that the Division’s conclusion that he was not eligible for the 2019 PFD because he was not an Alaska resident during the entire qualifying year, was *probably* incorrect.

¹ Ex. 1.
² Ex. 2, p. 1.
³ Ex. 2, p. 1.
⁴ Ex. 3.
⁵ Ex. 4.
⁶ Ex. 5.
⁷ Ex. 6, p. 7.
⁸ 15 AAC 05.030(h).
⁹ 2 AAC 64.290(c).

In order to be eligible for a PFD, an applicant must have been an Alaska resident during the entire qualifying year and that residency must have started before January 1 of the qualifying year.¹⁰ 2018 was the qualifying year for the 2019 PFD.¹¹ This means Mr. T must prove that he was an Alaska resident during the entire year of 2018 and that his residency began before January 1, 2018.

It is undisputed that Mr. T has continuously been in the State of Alaska since September of 2015. His extended physical presence in the State, however, is not sufficient to establish his Alaska residency for PFD purposes. The general rule for Alaska residency requires both a physical presence and an “intent to remain in the state indefinitely and to make a home in the state.”¹² Residency for PFD eligibility purposes requires more than mere physical presence and a general intent to remain. There must be a concrete act beyond mere physical residency:

Physical presence in Alaska is not, by itself, sufficient to establish residency. Before January 1 of the qualifying year, an individual must have taken at least one step beyond physical presence in Alaska to establish residency.¹³

The PFD regulations then set out a non-exclusive list of some of the permissible ways by which an applicant can demonstrate their intent to remain in the state. Those include, but are not limited to moving their household goods to the state, owning or renting a residence in Alaska, getting a job, registering a vehicle, getting a driver’s or hunting/fishing license, and registering to vote.¹⁴ Mr. T has not shown that he has done any of those or anything similar that would demonstrate his intent to remain in the state. His filings in this case instead show that he did not register a vehicle in Alaska, nor did he rent a place other than staying in transient settings such as a hotel.¹⁵

Mr. T relies on his physical presence in Alaska. He argues that he has been precluded from taking the additional step beyond physical presence necessary to demonstrate his intent to remain in Alaska by his ongoing lengthy incarceration, which also

¹⁰ AS 43.23.005.

¹¹ AS 43.23.095(6).

¹² AS 01.10.55(a).

¹³ 15 AAC 23.143(c).

¹⁴ 15 AAC 23.173(g).

¹⁵ The Division posited, based upon a statement purportedly made by Mr. T in late 2015, that he had no intention of remaining in Alaska. That statement is recited in an unverified bail memorandum, for which no certified copy was providing, and is itself hearsay. *See Ex. 8, p. 11.* Due to the multiple levels of hearsay, and the fact that Mr. T’s intent could have well changed since 2015, it is not relied upon.

makes it difficult for him to show proof of what actions he has taken. It must first be noted that his incarceration would not have prevented him from taking an act to establish residency during the five months prior to his incarceration (mid-September 2015 through mid-February 2016). Second, there are some actions he could still have taken to establish his intent to remain in Alaska despite his incarceration. For instance, the mere fact of his incarceration does not keep him from registering to vote in Alaska.¹⁶

In an analogous case, an applicant, who had been previously eligible, had his application denied because he was incarcerated outside the state of Alaska for most of the qualifying year. The decision noted that even though the applicant's absence from the state was involuntary, it did not fall within the list of allowable absences from the state and the denial of his application was upheld.¹⁷ Utilizing the same reasoning, Mr. T's involuntary incarceration, no matter how prolonged, does not excuse him from taking the requisite step, beyond physical presence, required by regulation to establish his Alaska residency for PFD purposes, which could have occurred at any time between his arrival in 2015 up to the end of 2017. This means that Mr. T, who has the burden of proof in this case, has failed to show by a preponderance of the evidence that he took that requisite step.¹⁸ Consequently, the Division correctly denied his application for the 2019 PFD.

IV. Conclusion

Mr. T was not an Alaska resident for PFD eligibility purposes during the entire qualifying year of 2018. As a result, he is not eligible for the 2019 PFD and the Division's denial of his application is AFFIRMED.

Dated: December 1, 2020.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁶ Unless Mr. T has a felony conviction for a crime of moral turpitude, he is eligible to vote in Alaska. *See* AS 15.05.030.

¹⁷ *In the Matter of M. D. S.*, OAH Case No. 09-0029-PFD (Commissioner Dept. of Revenue 2009). This decision is available online at aws.state.ak.us/OAH/Decision/Display?rec=5320.

¹⁸ The Division also argued that Mr. T committed fraud when he submitted the name of a Superior Court judge as one of his verifiers. However, Mr. T put forth the name of someone who could attest to his physical presence, and not whether he was a resident for PFD purposes. Inasmuch as this decision decides that his physical presence, on its own, was insufficient to establish his residency for PFD purposes, it is not necessary to address this argument, which was raised for the first time at hearing, and is not one of the reasons supplied for Mr. T's initial denial nor the denial of his informal appeal.

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 29th day of December, 2020.

By: Signed
Signature
Lawrence A. Pederson
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.]