

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

In the Matter of)	
)	
X & B C)	
)	OAH No. 21-0201-PFD
<u>2020 Permanent Fund Dividends</u>)	Agency No. 2020-002-0537, 0091

DECISION

I. Introduction

X and B C filed applications for 2020 Permanent Fund Dividends (PFD). The PFD Division (Division) denied their applications asserting that the Cs maintained their principal home outside Alaska during a portion of the qualifying year and through the date of their application. The Division also asserted that the Cs knew on the date of their application they would be moving from Alaska and therefore lacked the requisite intent to remain in Alaska indefinitely.

Based on a hearing conducted in this case and consideration of the evidence and testimony presented, the Division correctly concluded that the Cs maintained their principal home outside of Alaska during a portion of the qualifying year and lacked the requisite intent to qualify for 2020 PFDs. Consequently, the Division’s decision of denial is affirmed.

II. Facts

X and B C are longtime Alaska residents who have filed for and received PFDs since 1982.¹ They filed their 2020 PFD web applications, indicating that they were not physically present in Alaska at the time of filing.² Further, they identified that they were absent from Alaska a total of 132 days during the 2019 qualifying year.³ They also indicated that they had last left Alaska on December 16, 2019, and planned to return on January 6, 2020.⁴

Based on that information as well as additional information provided in supplemental responses requested by the Division,⁵ the Division denied their applications.⁶ It determined that the Cs had moved outside of Alaska during the qualifying year; lacked the intent to remain in Alaska indefinitely; and lacked the intent to make their home in the state throughout the

¹ Ex. 1, pp. 1, 6.
² Ex. 1, pp. 1, 7.
³ Ex. 1, pp. 5, 10.
⁴ Ex. 1, pp. 3, 9.
⁵ Ex. 2.
⁶ Ex. 3.

qualifying year, through the date of their application on January 2, 2020.⁷

The Cs filed an informal appeal of their denial.⁸ In it, they generally contended that: 1) they met the Alaska residency requirement; 2) their out-of-state travel during the 2019 qualifying year was for seasonal winter travel and also to inspect their Arizona home; 3) they only intended to change their address for a six-month period; and 4) they intended to “return to Alaska after this hiatus and continue to make it their forever home.”⁹

Following the request for informal appeal, the Division undertook a more in-depth analysis of the Cs’ intent to remain Alaska residents as well as the status of their Alaska and Arizona homes.¹⁰ In doing so, the Division determined that the Cs listed their City A home for sale in approximately May 2019, that home went under contract in roughly August 2019, and it ultimately sold on approximately January 8, 2020.¹¹ On the basis of that additional review and information, the Division issued its informal appeal decisions denying the Cs’ 2020 PFD applications.¹²

The Cs filed requests for formal hearing.¹³ In doing so, they acknowledged owning an Arizona “winter home” since 2008. They also acknowledged selling their City A home on January 6, 2020, after it became too much of a burden to maintain. Finally, they indicated that they returned to Alaska from Arizona on January 6, 2020, for purposes of closing on their City A home and left again for Arizona on January 10, 2020.¹⁴

A hearing occurred in this matter on March 10, 2021, at which the Cs appeared and testified. Based on the testimony and evidence at time of hearing as well as consideration of the documentation in the record, this case is now ripe and ready for ruling.

III. Discussion

As the Cs testified, they still consider themselves Alaska residents despite no longer owning or renting any real property in Alaska, or possessing any personal property here.¹⁵ This is because while X is presently 80 years-old, and B is 77 years-old, they hope to soon return to

⁷ Ex. 3.

⁸ Ex. 4.

⁹ Ex. 4, pp. 4, 14.

¹⁰ Division Position Statement (February 25, 2021).

¹¹ Ex. 8.

¹² Ex. 5.

¹³ Ex. 7.

¹⁴ Ex. 7, p. 3.

¹⁵ Testimony of Mr. and Mrs. C.

Alaska and find more age-appropriate housing.¹⁶ However, under the way the PFD regulations are structured, having moved from Alaska in the manner the Cs did makes them ineligible to receive 2020 PFDs.

The qualifying year for the 2020 PFD was 2019.¹⁷ To be eligible for the 2020 PFD, the Cs must show that they were Alaska residents during *all of the qualifying year*.¹⁸ To be Alaska residents, they *must intend to remain in Alaska indefinitely*.¹⁹ Therefore, the Cs have the burden of proof in showing, by a preponderance of the evidence, that they were and continued to be Alaska residents prior to January 1, 2020.²⁰ Per 15 AAC 23.143:

- (a) An individual's intent to establish residency, remain indefinitely in Alaska, or to return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:
 - (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
 - (2) ties to another state or country that indicate continued residency in the other state or country; and
 - (3) taken other action during the qualifying year, through the date of application, that is inconsistent with an intent to remain in Alaska indefinitely.

Further, 15 AAC 23.143(d)(1), provides that an individual is not eligible for a dividend if during the qualifying year or at the date of application, the individual has maintained a principal home in another state, except while absent for certain allowable reasons that do not apply here. Generally speaking, an applicant who maintains a principal home outside of Alaska may not receive a PFD, but the regulations do not impose a duty to maintain a principal home inside the state or in any state.²¹ Rather, a resident is ineligible to receive a PFD if the applicant *establishes* a primary home in a place other than Alaska.²²

¹⁶ Testimony of Mr. and Mrs. C; Ex. 7, p. 3.

¹⁷ AS 43.23.295(6).

¹⁸ AS 43.23.005(a)(3) (emphasis added).

¹⁹ AS 43.23.295(7).

²⁰ 15 AAC 05.030(h).

²¹ *In re J.R.W.*, OAH No. 09-0669-PFD at 4 (Dep't of Rev., Jan. 2012) (available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=5466>).

²² *In re J.R.W.*, OAH No. 09-0669-PFD at 4.

In this instance, the testimony and documentary evidence fail to support the Cs' claim of residency after leaving the state on December 16, 2019.²³ As they indicated, as of that date, their City A home was under contract to close during early January 2020. They had packed up all their personal belongings from the home that they intended to keep and returned with those items to their home in Arizona. In other words, as of December 16, 2019, they expected their City A home to close less than a month later, and as of that date, had substantially severed their ties with Alaska. This had occurred so extensively that all they needed to do was return to City A in early January to close on their home, which they did. They then promptly returned to Arizona just a few short days after the closing.²⁴

This case is to be contrasted with *In re L and SM*, OAH 11-0416-PFD (Dep't of Rev., Feb. 2012).²⁵ That case also involved longtime Alaska residents who purchased a home in Arizona, later sold their primary Alaska home, and subsequently applied for PFDs. The Division initially denied their PFD applications and that decision was overturned by the administrative law judge.²⁶

In overturning the Division's decision, the administrative law judge concluded that, despite the above-referenced facts, the applicants remained residents of Alaska. But there are many distinguishing facts that were present in *In re L and SM*, but do not exist here. First, unlike here, in that case, the applicants retained a second home in Alaska despite having sold their first Alaska home. Therefore, the applicants were able to argue that their principal home transitioned from their first Alaska home to their second Alaska home, and that their third home in Arizona was simply a winter residence. Second and unlike here, in *In re L and SM*, the applicants also continued to possess both real and personal property in Alaska, thus showing strong and continuing personal ties to this state. Third, even after selling their first home in Alaska, the applicants in *In re L and SM*, demonstrated their continuing and specific intent to: come to Alaska and stay at their second and now only Alaska home; visit friends and family throughout the state; and detail their intended Alaska visits.²⁷ No such similar evidence was presented in this case.

Further, in this case, there can be little argument that, at the time of the Cs' PFD

²³ Testimony of Mr. and Mrs. C.

²⁴ Testimony of Mr. and Mrs. C; Ex. 7, p. 3.

²⁵ Available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=5574>.

²⁶ See generally *In re L and SM*, OAH 11-0416-PFD.

²⁷ *In re L and SM*, OAH 11-0416-PFD.

applications on January 2, 2020, their principal home was in Arizona since they had already removed all their personal belongings from their only Alaska residence, and it was scheduled to close days later.²⁸ Consequently, in addition to the analysis set forth above, the Cs are also ineligible for 2020 PFDs per 15 AAC 23.143(d)(1), because they maintained their principal home outside of Alaska as of the date of their applications.

It is recognized that the Cs possess a heartfelt desire to return to Alaska and find age-appropriate housing.²⁹ But, it is important to avoid confusing intent with desire.³⁰ To a great extent, that is what the PFD statutes and regulations accomplish. Under the facts present here, the Cs moved from Alaska in December 2019, without the specific intent required to return and live indefinitely. Therefore, they are ineligible for 2020 PFDs.³¹

IV. Conclusion

The Cs moved from Alaska during the qualifying year and failed to maintain the requisite intent to remain indefinitely. Accordingly, the Division's decision denying their 2020 PFD applications is AFFIRMED.

DATED this 22nd day of April 2021.

By: Signed
Z. Kent Sullivan
Administrative Law Judge

²⁸ Testimony of Mr. and Mrs. C.

²⁹ Testimony of Mr. and Mrs. C; Ex. 7, p. 3.

³⁰ *In re R.M.*, OAH No. 09-0147-PFD at p. 4 (Dep't. of Rev., August 2009) (available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=5352>).

³¹ Testimony of Mr. and Mrs. C.

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 13th day of May, 2021.

By: Signed
Signature
Z. Kent Sullivan
Name
Administrative Law Judge
Title

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