

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

|                                     |   |  |
|-------------------------------------|---|--|
| In the Matter of                    | ) |  |
|                                     | ) |  |
| J K                                 | ) |  |
| X & Y K (minors)                    | ) |  |
|                                     | ) |  |
| <u>2017 Permanent Fund Dividend</u> | ) | OAH No. 18-0504-PFD<br>Agency No. 2017-032-7432/7429 |

**DECISION**

**I. Introduction**

J K is a 2017 Permanent Fund Dividend (PFD) applicant who now lives in Mississippi. The Permanent Fund Dividend Division denied his application on the basis of nonresidency, also denying the applications of the two of his children who are still minors, whom he had sponsored. After that result was upheld at the informal appeal level, Mr. K requested a formal hearing. He received that hearing on June 6, 2018, with the record remaining open for additional submissions until June 20.

The PFD Division’s denial of the three K family application is affirmed because the evidence shows that Mr. K did not have the “intent to remain” necessary to be an Alaska resident when he applied for the dividend. This circumstance disqualifies him and the children he sponsored from eligibility.

**II. Facts**

J K was an Alaska resident and PFD recipient for a number of years, living and working in City A.<sup>1</sup> He has two children who are still minors, X and Y, who also lived in the City A home in the custody of Mr. K and his wife.

In April of 2016, Mr. K was laid off.<sup>2</sup> On November 7, 2016, he began a temporary, hourly job at a Business A plant in Mississippi, apparently through a temporary agency.<sup>3</sup> At this time, it remained quite possible he would not move from Alaska permanently. Indeed, as late as December 2016, he interviewed for a job with the City of City A, although he was not selected.<sup>4</sup>

On February 8, 2017, Business A gave Mr. K a formal letter offering him indefinite, full-time, salaried employment at the plant in Mississippi.<sup>5</sup> The employment relationship was “at

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<sup>1</sup> Ex. 3, p. 2.  
<sup>2</sup> *Id.*  
<sup>3</sup> Ex. 9, p. 7.  
<sup>4</sup> Testimony of Mr. K.  
<sup>5</sup> Ex. 9, p. 8.

will” but was envisioned to be “long-term.”<sup>6</sup> Although the offer makes no mention of it, Mr. K believes there was a probationary period for the first few months of the permanent job.<sup>7</sup> Mr. K accepted the offer in writing the same day it was made, February 8, 2017.<sup>8</sup> The agreed start date was February 27, 2017.<sup>9</sup>

On February 18, 2017—that is, between the date of his acceptance and the start date—Mr. K applied on line for PFDs for himself and X and Y.<sup>10</sup> He disclosed that he would be starting a “permanent” job in Mississippi on February 27.<sup>11</sup> He indicated an anticipated return date to Alaska of January 21, 2026.

The K family loved Alaska, particularly the generous benefits of its home-school program, which Mississippi does not match.<sup>12</sup> They have “proposed the idea of maybe going back to Alaska” if they have the opportunity, and have rented, rather than sold, their house in City A.<sup>13</sup> However, they have also purchased a house in Mississippi.<sup>14</sup> They completed their house-hunting and made the purchase by early April of 2017,<sup>15</sup> suggesting a process that began quite a bit sooner.

At the hearing, everyone initially had the impression that the Business A offer occurred after February 18, the date of the PFD application. Mr. K and his family explained that their decision to move did not occur until he had the offer in hand. Once the date of the Business A offer became clear, Mr. K and his wife engaged in a fair amount of back-pedaling, seeking to establish that even after his February 8 acceptance of the offer, the family had not yet decided to move.<sup>16</sup> On balance, this testimony was not convincing.

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<sup>6</sup> *Id.*

<sup>7</sup> Testimony of Mr. K.

<sup>8</sup> Ex. 9, p. 8A.

<sup>9</sup> *Id.*

<sup>10</sup> Ex. 1.

<sup>11</sup> Ex. 1, p. 3.

<sup>12</sup> Testimony of Ms. Z and B K.

<sup>13</sup> Testimony of B K.

<sup>14</sup> Ex. 9, p. 9.

<sup>15</sup> *Id.*

<sup>16</sup> *E.g.*, testimony of Ms. Z on recording file 2 (“we couldn’t decide yet about this”). The back pedaling continued after the hearing. At the hearing Mr. Z testified that she purchased a ticket in late February to come to Mississippi to look for a house. However, after the hearing, it turned out that she purchased the ticket in late January, suggesting the family was beginning to expect a permanent offer—and a move—even sooner than February 8. Mr. K then wrote a letter changing the explanation for the trip, saying that it had been planned so that his wife could cook for him. Letter from H. K to Judge Kurtz, June 10, 2018. Although Mr. K’s inability to cook had been mentioned at the hearing, it had not been suggested as a reason for the trip to Mississippi. The testimony at the hearing itself was consistent that she bought a ticket to Mississippi for house-hunting.

Testimony from B K, Mr. K's adult daughter, was particularly clear on this point. She recalled that so long as Mr. K was in Mississippi as a temporary employee, the family felt very uncertain about their future and thought that Mr. K would probably return, but when he "finally got an official offer from, you know, Business A, saying that we would like to hire you as a permanent employee," the expectation changed and they began preparing to leave. B K had the impression that the offer as occurred after the date of the PFD application but, of course, the written evidence clearly shows that it occurred before.

Another item of evidence that is telling on this this issue is Mr. K's application itself. On the application, he stated that he did not expect to return to Alaska until 2026.<sup>17</sup> This statement is not consistent with the notion that he had not yet made a decision to move.

I find that no later than February 8, 2017, the K family decided to move to Mississippi.

### **III. Discussion**

#### *A. Acceptance of Permanent Employment*

The question of Mr. K's eligibility is easily answered. A department regulation creates a bright-line rule that a person "is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application" the person has "accepted full-time, permanent employment in another state or country."<sup>18</sup> This rule applies unless the person is out of state on one of the long-term allowed absences (such as military service), none of which Mr. K has claimed or could claim. Mr. K accepted full-time, permanent employment in Mississippi ten days before the date of his application. The fact that the employment was "at will" and that there may have been a period of probation at the beginning does not alter its permanent nature. This was not a temporary, time-limited assignment. Since Mr. K accepted permanent, full-time employment in Mississippi before he applied for a 2017 PFD, Mr. K is ineligible.

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<sup>17</sup> Ex. 1, p. 3.

<sup>18</sup> 15 AAC 23.143(d).

### B. Residency

To be eligible for a dividend, an individual must be “a state resident *on the date of application.*”<sup>19</sup> It is not enough to be a resident throughout the qualifying year (2016); the applicant’s residency has to continue through the date the person applies. To be a state resident, a person must have “the intent to remain in the state indefinitely and to make a home in the state.”<sup>20</sup>

As found above, Mr. K and his wife decided to move to Mississippi no later than February 8, 2017, ten days before the PFD application. Once they decided to move to Mississippi, the family no longer had the “intent to remain in the state indefinitely” that is necessary for Alaska residency. This is a second, independent reason that Mr. K is ineligible.

### C. Eligibility of the Children

When application of a child (other than a child in state custody) is sponsored by a parent or other representative, the sponsor must be eligible for the same dividend for which the child is applying, or ineligible only for narrow reasons (such as conviction of a crime) that do not apply here.<sup>21</sup> Since Mr. K was not eligible, he cannot be an eligible sponsor.<sup>22</sup>

More fundamentally, when a child is living with his or her parents, the “intent to remain” of the child for purposes of residency is established by the intent of the parents.<sup>23</sup> Since neither of X and Y’s parents had the intent to remain needed for residency on February 18, 2017, the date of the children’s applications, it follows that both children also lacked Alaska residency. This makes them ineligible for the 2017 dividend.

## IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the 2017 Permanent Fund Dividends of J, X, and Y K is AFFIRMED.

DATED this 4<sup>th</sup> day of September, 2018.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

<sup>19</sup> Alaska Statute 43.23.005(a)(2) (italics added).

<sup>20</sup> Alaska Statute 01.10.055. Residency can continue when an individual is absent from the state, but the intent to remain a resident must continue. *Id.*

<sup>21</sup> 15 AAC 23.113(b)(1).

<sup>22</sup> If there were any reason to believe that Ms. Z, Mr. K’s wife, was eligible, she might be substituted as a sponsor. However, she, like her husband, appears to have lacked the “intent to remain” needed for Alaska residency and PFD eligibility.

<sup>23</sup> *E.g., In re R.E.*, OAH Case No. 06-0385-PFD (Comm’r of Revenue 2006), at 4 (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD060385.pdf>).

## 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 16<sup>th</sup> day of October, 2018.

By: Signed  
Signature  
Sheldon Fisher  
Name  
Commissioner  
Title

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