

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

In the Matter of)	
)	
B M D)	OAH No. 20-0308-PFD
)	Agency No. 2019-061-2340/2339/2338
_____)	2337/2335

DECISION

I. Introduction

The Permanent Fund Dividend Division (Division) denied the 2001 and 2003 to 2007 Permanent Fund Dividend (PFD) applications filed on behalf of B M D while he was a minor on the grounds his sponsor was not personally eligible to receive a PFD and, thus, could not legally sponsor his applications pursuant to 15 AAC 23.113(b)(1). Mr. D reapplied on his own behalf after he reached majority seeking to correct what he perceived to be a mistake. The Division again denied the PFD applications for the same reason. Mr. D appealed.

Because the Division correctly concluded that Mr. D’s mother was not an eligible sponsor and Mr. D did not identify an eligible substitute to sponsor the applications, the decision by the Division is Affirmed.

II. Facts¹

B M D was born in Alaska on 00/00/01.² Both his parents are Mexican nationals who come to Alaska for seasonal employment. They receive visas to work in Alaska for a specific duration and for a designated, sponsoring employer.³ As a minor, Mr. D did not travel to and from Mexico, but remained in Alaska throughout the year living with a great-uncle when his parents were not present. He attended local Alaskan schools for kindergarten through high school, although a few years of his elementary education were conducted as part of a state authorized home school program.⁴

¹ These facts were established by a preponderance of the evidence at the hearing and through the exhibits submitted by the parties.

² Ex. 1., p. 1.

³ These are known as H2A visas. They permit agricultural workers to enter the United States to work at a particular location for a specific duration of time, typically six months. The employer applies for the visa on the worker’s behalf using an I-29 form. Testimony of J. Ketelson.

⁴ Ex. 5.

His mother sponsored Mr. D's PFD applications in 2001 and from 2003 through 2007.⁵ Those applications were denied by the Division at the time.⁶ The denials were based on the Division's conclusion that because his mother was in Alaska on a temporary work visa she was not a qualifying alien under the governing regulations. In addition, because Alaska residency requires an intent to remain in Alaska indefinitely and make a home,⁷ but Mr. D's mother was present in Alaska only on an alien temporary work visa, the Division concluded she could not legally form the required intent to become an Alaska resident which is also an essential requirement for a person to be PFD eligible.⁸ Thus, she could not be an authorized sponsor for Mr. D pursuant to AS 43.23.005(c) and 15 AAC 113(b)(1). Those authorities establish that a person must be eligible to receive their own PFD before they can appropriately sponsor a minor.

Mr. D was an infant to a seven-year-old when his mother sponsored the contested PFD applications.⁹ In 2019 after he reached his majority, Mr. D filed an application requesting the Division reverse its prior decisions.¹⁰ Regulations permit the Division to pay dividends to people who have reached their majority if the applicant would have qualified for the dividend had an eligible sponsor applied on their behalf at the time.¹¹

The Division initially denied Mr. D's application.¹² Mr. D filed an informal appeal, arguing he had a person who could be a substitute sponsor.¹³ The Division upheld the informal decision.¹⁴ Mr. D filed a formal appeal on March 25, 2020.

The hearing was held on June 10, 2020. Although Mr. D did not identify a proposed substitute sponsor by name in the forms filed with the Division,¹⁵ the hearing focused on

⁵ Ex. 1, pp. 1-10.

⁶ Ex. 2; testimony of A. D.

⁷ AS 01.10.055(a).

⁸ AS 43.23.005(a)(5); AS 43.23.095(7).

⁹ In 2008 Mr. D's great uncle became his PFD sponsor. Typically, a minor must be sponsored by a parent or legal guardian, but 15 AAC 23.113(h) permits the Division to accept an eligible substitute sponsor if the child meets all eligibility requirements, but does not have a parent or lawful guardian available. The propriety of that action is not part of this decision, but such a decision for a minor who is a United States citizen and life-long Alaskan would have been consistent with Division policy and traditional Alaskan notions of justice and fair play.

¹⁰ Ex. 3.

¹¹ 15 AAC 23.113(b).

¹² Ex. 4.

¹³ Ex. 6.

¹⁴ Ex. 2.

¹⁵ Ex. 6.

whether his father could be an appropriate substitute. Mr. D did not identify another person for consideration.

PFD Specialist Peter Scott represented the Division. He called one witness: Jeffrey Ketelson. Mr. Ketelson works for United States Department of Homeland Security. He provided background regarding Mr. D's parents' immigration status. He confirmed that neither Mr. D's mother or father were United States citizens from 2001 through 2007.

Mr. Ketelson testified that he obtained and reviewed their alien files from archives to verify that Mr. D's mother was in Alaska only on temporary, limited work status pursuant to an agricultural visa from 2001 through 2007 and beyond. Mr. D's father's immigration status indicated he was not a lawful alien during the relevant time period. Neither the hard files nor the computer records demonstrated that either parent had taken a significant step to convert or adjust to permanent or indefinite status with the Immigration and Naturalization Service (INS). As a result, neither were qualifying aliens nor could they lawfully establish residency in Alaska from 2001 through 2007 due to the status under which they were present in the United States.¹⁶

After Mr. Ketelson testified, Mr. D presented his case. He explained how he had been born and raised in Alaska. He attended Anchorage schools from kindergarten through high school graduation. His parents work every year with a local farm and garden center that sponsors their visas to the best of his knowledge. They have done so all his life. He has traveled outside of Alaska only three times: once when he was toddler, which he does not remember; once on a school trip that included a visit to Disneyland; and once after his high school graduation to visit family in celebration. He is employed with a local landscaping company, and has no plans to live anywhere other than Alaska.¹⁷

Mr. D acknowledged that neither of his parents were United States citizens from 2001 to 2007. He is not aware that either have ever filed paperwork to change their immigration status from temporary, limited agricultural work to a more permanent one. Mr. D did not suggest a person other than his mother or father as a proposed sponsor for the contested minor dividends. Prior to the hearing he had not fully understood how PFD eligibility was defined by law. However, given the strength of his own ties to Alaska and

¹⁶ Testimony of J. Ketelson.

¹⁷ Testimony of A. D.

the fact he received subsequent dividends from 2008 to the present, he believed it was equitable for him to receive the previously denied PFDs.¹⁸

III. Discussion

To qualify for a PFD, an applicant must establish that he or she is an eligible recipient. To be an eligible recipient a person must meet several criteria.¹⁹ The applicant must file a timely application; be a state resident on the date of the application and throughout the qualifying year; absent from the state only as allowed by statute; and in compliance with military selective service registration requirements, if applicable.²⁰ A state resident is an individual “who is physically present in the state with the intent to remain indefinitely and make a home in the state.”²¹

Importantly for this case, the applicant must also be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, an alien with official refugee status, or an alien who has been granted asylum under federal law.²² An alien is considered lawfully admitted for permanent residence if the person has been assigned an Immigration and Naturalization Act status that allows the person to adopt the United States as the person’s domicile.²³ Thus, a person who qualifies as an “immigrant” as verified by the INS, a non-immigrant whose status does not require them to declare residency in a country other than the United States, a person who is on indefinite parole into the United States, and people who qualify for Conditional Permanent Residency status will all be considered eligible for the PFD.²⁴

However, a person whose alien status allows only a limited stay in the United States is not a qualifying alien and cannot be considered eligible for the PFD unless the person has taken a significant step to convert or adjust to permanent or indefinite status.²⁵ In addition, a person who is in Alaska on a temporary basis cannot form the necessary intent to remain indefinitely and make a home in Alaska required to establish residency. Ultimately, there

¹⁸ Id.
¹⁹ AS 43.23.005.
²⁰ AS 43.23.005(a).
²¹ AS 43.23.095(7); AS 01.10.055(a).
²² AS 43.23.005(a)(5).
²³ 15 AAC 23.154.
²⁴ 15 AAC 23.154(a).
²⁵ 15 AAC 23.154(d).

was no genuine dispute that neither of Mr. D's parents were eligible for their own individual PFDs. They were not United States citizens or qualifying aliens. They could not form an intent to remain in Alaska indefinitely and make a home in Alaska.

Minors may not file PFD applications on their own behalf. Typically, the minor is sponsored by a parent or legal guardian.²⁶ Applications filed on behalf of minors must establish that both the minor and the sponsor are eligible recipients.²⁷

After a minor reaches majority, he or she can request the Division pay dividends that were denied or not applied for during their minority.²⁸ The Division is authorized to do so, however, only for individuals who did in fact have an eligible sponsor during their minority.²⁹

In this case, there is no dispute that Mr. D as an adult is an Alaska resident and eligible for the PFD. As noted by Mr. Scott, Mr. D represents the type of resident who is a credit to Alaska. However, to qualify for the PFD in 2001 through 2007 while he was a minor, Mr. D was required to have a sponsor who was also eligible for the PFD. Because his parents were not qualifying aliens or Alaska residents as defined by law, neither could be an eligible sponsor for Mr. D's minor PFD applications. Mr. D did not identify a person other than his parents to be evaluated as a substitute sponsor. No additional eligible substitute was proposed.

Therefore, the Division did not err when it denied the applications at the time they were filed nor did it err when it denied Mr. D's subsequent 2019 application.

IV. Conclusion

For the reasons contained herein, the Division is affirmed.

Dated: August 3, 2020

Signed

Carmen E. Clark
Administrative Law Judge

²⁶ 15 AAC 23.113.

²⁷ Id.

²⁸ AS 43.23.055(c); 15 AAC 23.133(b)-(c).

²⁹ Id.

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 28th day of August, 2020.

By: Signed
Signature
Carmen E. Clark
Name
Administrative Law Judge
Title

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