

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

In the Matter of:	)	
	)	
B.B. & T.B. and M.B., N.B., O.B., minors	)	OAH No. 21-2174-PFD
	)	Agency No. 2021-008-
	)	0392/0500/0344/0356/0367
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**DECISION**

**I. Introduction**

B.B. and T.B. are long-term Alaskans who have been living out of state while B.B. serves in the United States Air Force. Their children N.B., M.B., and O.B. were born while B.B. was stationed out of state. The B Family frequently return to Alaska and planned to do so in 2020. That visit would have maintained their eligibility for Permanent Fund Dividends (“PFDs”). But the B Family’s plans were derailed by the COVID-19 pandemic and the travel restrictions the military imposed to slow the spread of the virus. The Legislature passed a law to address PFD eligibility for people quarantined out of state during the pandemic. The Department of Revenue Permanent Fund Dividend Division (“Division”), however, determined that this law did not apply to the B Family and denied their 2021 PFDs. The Division submitted supplemental guidance from Department of Law, however, stating that the Division’s interpretation of the law is incorrect. Applying this law here, the B Family have demonstrated they are eligible. Accordingly, the Division’s decisions denying 2021 PFDs for the B Family are reversed.

**II. Background**

B.B. is a lifelong Alaska resident and her husband moved to Alaska at the age of 12.<sup>1</sup> They have been living outside the State since 2011 while B.B. serves in the United States Air Force.<sup>2</sup> Their children N.B., M.B., and O.B. were born during B.B.’s ongoing service.<sup>3</sup> B.B. has been stationed in Florida since September 2018.<sup>4</sup>

Generally, a person must physically reside in Alaska to be eligible for a PFD. But certain long-term absences are allowed, including for active military service.<sup>5</sup> Military servicemembers

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<sup>1</sup> Division’s Position Statement at 1, n.4; Ex. 1 at 6.  
<sup>2</sup> Division’s Position Statement at 1-2.  
<sup>3</sup> Ex. 1 at 19, 25, 31.  
<sup>4</sup> Division’s Position Statement at 2.  
<sup>5</sup> AS 43.23.008(a)(3).

and their dependent spouses and children must still meet an eligibility requirement of spending at least 72 consecutive hours in Alaska during the prior two years.<sup>6</sup> Thus when the B Family applied for 2021 PFDs, they each needed to have spent 72 hours in Alaska between January 1, 2019 and December 31, 2020.

The Division determined that the B Family did not meet this 72-hour requirement. The B Family last visited Alaska in 2018 and had planned to return in 2020.<sup>7</sup> But those plans were disrupted by the COVID-19 pandemic.

The Department of Defense imposed a stop movement order in March, restricting U.S.-based service members to their local areas.<sup>8</sup> B.B. was restricted to travelling within a 150-mile radius.<sup>9</sup> Even then, travel was “limited to your place of employment and travel necessary for food, water, medication, health care, or to provide care for a family member or other installation member.”<sup>10</sup> B.B. pointed out that she needed to be particularly careful of COVID exposure because of her work in a top secret building with many elderly scientists.<sup>11</sup> Travel and other COVID restrictions were extended through 2020.<sup>12</sup> B.B. attempted to request leave during the year, but was continually denied.<sup>13</sup>

T.B. was subject to similar restrictions because of his job on base managing properties. As a civilian contractor, T.B. was required to abide by the military’s travel and other COVID restrictions or risk losing his job.<sup>14</sup> He was also expected to take precautions as B.B.’s spouse.<sup>15</sup>

In May 2020, the Alaska Legislature passed SB 241 to extend COVID relief under a number of state laws. For PFD-eligibility, SB 241 amended the uncodified law to state:

Notwithstanding AS 43.23.005(a)(4) and 43.23.008(d), during the novel coronavirus disease (COVID-19) public health disaster emergency declared by the governor on March 11, 2020, as extended by sec. 2 of this Act, an individual otherwise eligible for a permanent fund dividend who has notified the commissioner of revenue or the commissioner's designee that the individual expects to be absent from the state for a continuous period on or after March 11,

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<sup>6</sup> AS 43.23.005(a)(4).

<sup>7</sup> B.B. testimony. The Division has not disputed the scope of this restriction, which the Division encountered in connection with a substantial number of service members.

<sup>8</sup> *Id.*

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

<sup>10</sup> Ex. 7 at 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; Ex. 7 at 7-18.

<sup>13</sup> B.B. testimony

<sup>14</sup> *Id.*

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

2020, remains eligible to receive a permanent fund dividend if the only reason the individual would be ineligible to receive a permanent fund dividend is that the individual was absent from the state because of conduct, including maintaining a voluntary or compulsory quarantine, related to avoiding or preventing the spread of COVID-19.<sup>16</sup>

Despite this temporary modification to the law, the Division denied the B Family's 2021 PFDs, finding that they did not satisfy the 72-hour rule.<sup>17</sup> Additionally, because B.B. was found not to be eligible, T.B. and their children could not be eligible as active military spouse and dependents.<sup>18</sup>

A hearing was held on November 22, 2021. B.B. testified, as did T.B. Peter Scott represented the Division. The record was left open for the Division to submit additional guidance by the Department of Law.

### III. Discussion

To be eligible for a 2021 PFD, the B Family needs to meet the residency requirements specific to PFDs.<sup>19</sup> The B Family has the burden of showing that the Division incorrectly found that they were not eligible.<sup>20</sup>

The issue here is whether the SB 241 language quoted above allows the B Family to be eligible for 2021 PFDs despite not satisfying the 72-hour rule.

The Division initially took the position that SB 241 would provide eligibility only for a person who needed merely to arrive in Alaska to be eligible, not a person who needed to arrive and remain for a period of time like the B Family.<sup>21</sup> That interpretation would effectively make SB 241 inapplicable to persons needing to satisfy the 72-hour rule, which is at odds with the legislature's prefatory language that this provision applies "[n]otwithstanding AS 43.23.005(a)(4) [the 72-hour rule] and 43.23.008(d) [a separate 30-day rule]."<sup>22</sup> There is no applicable legislative history for this provision. But examining the language itself, "notwithstanding" generally means that the language that follows will override otherwise

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<sup>16</sup> AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

<sup>17</sup> Ex. 3.

<sup>18</sup> *Id.*

<sup>19</sup> AS 43.23.005(a)(3); AS 42.23.008(a)(13).

<sup>20</sup> 15 AAC 23.173(i); 15 AAC 05.030(h).

<sup>21</sup> Scott statement at hearing.

<sup>22</sup> AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

contradictory provisions.<sup>23</sup> For this provision in particular, the fact that the legislature expressly cited the potential conflict with AS 43.23.005(a)(4) and 43.23.008(d) indicates an intent for this provision to override that conflict. Otherwise, there would have been no need to add the “notwithstanding” language. The “notwithstanding” in SB 241 would thus mean that even though another law requires 72 hours’ physical presence, SB 241 is providing for PFD eligibility.

It is further evident from the bill as a whole that the legislature passed the law to address impacts of the COVID-19 pandemic on various state laws. Other portions of the bill imposed temporary measures to decrease travel or in-person interactions, including provisions addressing electronic shareholder meetings, telemedicine, and electronic shareholder meetings.<sup>24</sup> If the legislature was concerned about voters, shareholders, and medical patients transmitting the virus, it stands to reason they would have been equally concerned about military servicemembers risking exposure to return to the state simply to fulfill PFD eligibility requirements. The bill also includes provisions to ease administrative burdens on the public during the pandemic, including extending PFD and tax filing deadlines. The provision allowing people quarantining out of the state to be eligible for a PFD similarly eases the burden of maintaining eligibility in the face of unprecedented obstacles.

The Division may now agree. In its December 2, 2021 supplemental filing, the Division quotes language from Department of Law that “[n]otwithstanding’ means ‘in spite of.’ With this rule of statutory construction and this definition in mind, §16 of SB 241 suspends the application of AS 43.23.008(d).”<sup>25</sup> The Division further acknowledged that counsel’s statement should also apply to persons ineligible under the 72-hour rule, AS 43.23.005(a)(4).<sup>26</sup> Thus it is appropriate for the Department, consistent with the language of this uncodified law and the overall purpose of SB 241, to reverse its position on interpreting SB 241 to be inapplicable to persons needing to satisfy the 72-hour rule.

Accordingly, under SB241, if a person was absent from Alaska during the COVID-19 public health disaster to prevent the spread of the virus, that absence alone will not bar PFD

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<sup>23</sup> See, e.g., *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (“As we have noted previously in construing statutes, the use of such a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.”).

<sup>24</sup> AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

<sup>25</sup> Supplemental Submission by the Division.

<sup>26</sup> *Id.*

eligibility, including for people who needed to return to the state to satisfy the 72-hour rule or 30-day rule.

Applying SB 241 to the B Family, they would need to (1) have been absent from the state to avoid or prevent the spread of COVID-19, including a voluntary or compulsory quarantine; (2) have notified the Department of Revenue Commissioner or designee of the absence; and (3) be eligible for a PFD but for that absence.<sup>27</sup> The B Family demonstrated that they were absent from Alaska in 2020 to prevent the spread of COVID-19. B.B. was subject to quarantines and COVID-related travel restrictions imposed by the military from the onset of the pandemic through the end of 2020.<sup>28</sup> T.B. was under similar restrictions for his job and as B.B.'s spouse.<sup>29</sup> At the hearing, the Division agreed that the B Family had satisfied the notice requirement of SB 241 as well.<sup>30</sup> And the Division's bases for denying eligibility all stemmed from the B Family's absence from the state and failure to satisfy the 72-hour rule.<sup>31</sup> Because the B Family was absent from Alaska in 2020 to prevent the spread of COVID, they provided the required notice, and they were eligible but for that absence, the B Family should be eligible for 2021 PFDs under SB 241.

#### **IV. Conclusion**

The B Family has met their burden to show they are eligible for 2021 PFDs. Accordingly, the Division's decisions denying those PFDs are reversed.

Dated: December 13, 2021

*Signed*

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Rebecca Kruse  
Administrative Law Judge

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<sup>27</sup> AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

<sup>28</sup> B.B. testimony.

<sup>29</sup> *Id.*

<sup>30</sup> Mr. Scott statement at hearing.

<sup>31</sup> Ex. 3.

## 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 6<sup>th</sup> day of January, 2022.

By: Signed  
Signature  
Rebecca Kruse  
Name  
Administrative Law Judge  
Title

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