

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

In the Matter of:)	
)	
K.Q., N.Q., and J.Q., a minor)	OAH No. 21-2396-PFD
)	Agency No. 2021-051-0715/0884/0762
_____)	

DECISION

I. Introduction

K.Q., N.Q., and their daughter J.Q. came to Alaska when K.Q. was stationed here and chose to remain Alaskans, even as K.Q. was transferred out of state in 2018. They planned to return in 2020 to make arrangements to move back to the state. That visit would have maintained their eligibility for Permanent Fund Dividends (“PFDs”). But the Q 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 Q 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 Q Family have demonstrated they are eligible. Accordingly, the Division’s decisions denying 2021 PFDs for the Q Family are reversed.

II. Background

K.Q., N.Q., and their daughter J.Q. established Alaska residency for purposes of PFD eligibility in 2013 after K.Q. had been stationed in Alaska.¹ K.Q. was transferred to Missouri in 2018, but the Q Family planned to return to Alaska indefinitely in 2021, when K.Q. planned to retire.²

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.³ Military servicemembers and their dependent spouses and children must still meet an eligibility requirement of spending at

¹ Ex. 1 at 6, 13, 19; Division’s Position Statement at 1.
² Division’s Position Statement at 2; Q Family testimony.
³ AS 43.23.008(a)(3).

least 72 consecutive hours in Alaska during the prior two years.⁴ Thus when the Q 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 Q Family did not meet this 72-hour requirement. The Q Family was last in Alaska in 2018, before K.Q. was transferred. K.Q. spent most of 2019 deployed overseas.⁵ He and his family planned to visit in 2020 to make arrangements for moving here when K.Q. retired.⁶ But those plans were disrupted by the COVID-19 pandemic.

The Department of Defense imposed a stop movement order in March 2020, imposing travel restrictions on “all DoD uniformed personnel, civilian personnel and family members.”⁷ For K.Q.’s location, he was not allowed to travel outside of a 60-mile radius.⁸ These travel restrictions were continually extended throughout 2020 by K.Q.’s local commanders.⁹ Exceptions were made only for family emergencies and required authorization from major command, who is a one or two-star general.¹⁰ K.Q. was not able to leave his local area and travel to Alaska until 2021, when he retired from the military.¹¹

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, 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-19.¹²

⁴ AS 43.23.005(a)(4).

⁵ Ex. 6 at 3. The Division has not disputed the scope of this restriction, which the Division encountered in connection with a substantial number of service members.

⁶ Q Family testimony.

⁷ Ex. 6 at 4-5.

⁸ Q Family testimony.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

Despite this temporary modification to the law, the Division denied the Q Family’s 2021 PFDs, finding that they did not satisfy the 72-hour rule.¹³ Additionally, because K.Q. was found not to be eligible, N.Q. and their daughter could not be eligible as an active military spouse and dependent.¹⁴

A hearing was held on November 23, 2021. K.Q. provided testimony. Peter Scott represented the Division. The record was left open for the Division to submit additional guidance from the Department of Law by December 2, 2021.

III. Discussion

To be eligible for a 2021 PFD, the Q Family needs to meet the residency requirements specific to PFDs.¹⁵ The Q Family have the burden of showing that the Division incorrectly found that they were not eligible.¹⁶

The issue here is whether the SB 241 language quoted above allows the Q 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 Q Family.¹⁷ 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].”¹⁸ 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 contradictory provisions.¹⁹ 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

¹³ Ex. 3.

¹⁴ *Id.*

¹⁵ AS 43.23.005(a)(3); AS 42.23.008(a)(13).

¹⁶ 15 AAC 23.173(i); 15 AAC 05.030(h).

¹⁷ Scott statement at hearing.

¹⁸ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

¹⁹ *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.”).

“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.²⁰ 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).”²¹ 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).²² 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 SB 241, 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 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 Q 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

²⁰ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

²¹ Supplemental Submission by the Division.

²² *Id.*

(3) be eligible for a PFD but for that absence.²³ The Q Family demonstrated that they were absent from Alaska in 2020 to prevent the spread of COVID-19. K.Q. was under COVID-related travel restrictions imposed by the military from the onset of the pandemic through the end of 2020.²⁴ At the hearing, the Division agreed that the Q Family had satisfied the notice requirement of SB 241 as well.²⁵ And the Division's bases for denying eligibility all stemmed from the Q Family's absence from the state and failure to satisfy the 72-hour rule.²⁶ Because the Q 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 Q Family should be eligible for 2021 PFDs under SB 241.

IV. Conclusion

The Q Family have 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 _____

Rebecca Kruse
Administrative Law Judge

²³ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

²⁴ Ex. 6; Q Family testimony.

²⁵ Mr. Scott statement at hearing.

²⁶ 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 6th day of January, 2022.

By: Signed
Signature
Rebecca D. Kruse
Name
Administrative Law Judge
Title

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