

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

In the Matter of:)
)
D.W. on behalf of minor children.) OAH No. 22-0794-PFD
) 4337/4354/4365/4381
_____)

DECISION

I. Introduction

D.W. is the mother of the minor children S.M., K.M., L.M., B.M., and C.M. (“M Children”). D.W. applied for the 2022 Permanent Fund Dividend (PFD) for herself and the M Children. All of the applications were denied.

D.W. did not appeal the denial of her application. However, she requested an informal appeal for each of the M Children. As part of those appeals, she requested that the M Children’s sponsor be changed to her adult son M.M. Those informal appeals were denied, as was the request for a change in sponsorship. A request for a formal hearing by correspondence followed.

Based upon the evidence in the record, the Division’s decision to deny the M Children’s applications is AFFIRMED. In order for the M Children to qualify for the 2022 PFD, they had to have an eligible sponsor. D.W. was their sponsor. She was not eligible for the 2022 PFD because she was indisputably absent from the State of Alaska for almost the entire qualifying year for non-allowable reasons. The facts also showed that D.W., and hence the M Children, did not have the requisite intent to remain in Alaska indefinitely as required for them to be eligible for the PFD. As discussed below, the denial of the request for a change in the M Children’s sponsor is also AFFIRMED.

II. Facts

D.W. is the mother of the M Children. She is also the mother of M.M., who is an adult. D.W. applied for the 2022 PFD.¹ She also applied for the 2022 PFD, as the eligible sponsor, for each of the M Children.² Both D.W. and the M Children had received PFDs for

¹ Ex. 1, pp. 1 – 4.
² Ex. 2, pp. 1 – 2, 4 – 5, 7 – 8, 10 -11, 13 – 14.

the years up to and including 2021.³ The 2021 – 2022 school records submitted by D.W. show that the M Children were enrolled in the Anchorage School District for the 2021 – 2022 school year and that their father was residing in Alaska at the same address listed for D.W.

D.W. was absent from the state a total of 313 days during 2021. Those visits were for family visits (123 days), vacation (78 days), and looking for a home in Minnesota (66 days), a total of 313 days. She was also absent house hunting the first part of January 2022.⁴ D.W., the M Children, and M.M. completely moved to Minnesota in June of 2022.⁵

D.W.'s application was denied on May 13, 2022 because she was absent from the State of Alaska for more than 180 days in 2021 without having an allowable reason for her extended absence.⁶ The applications of each of the M Children were denied on May 13, 2022 because the sponsor, D.W., was not eligible.⁷

D.W. did not appeal the denial of her application. She, however, filed an informal appeal for the denial of the M Children's applications. In her appeal form for each, she acknowledged that she was not eligible for the 2022 PFD and requested that the M Children's sponsor be changed to her adult son M.M.⁸

The Division denied the M Children's informal appeals for two separate reasons. First, that they did not have an eligible sponsor. Second, because the facts showed that D.W. intended to move outside Alaska at the time the applications were filed as shown by her actively looking for a house in Minnesota during 2021, D.W. did not have the necessary intent to remain indefinitely in Alaska. Because she was the sponsor for the M Children, her intent formed the children's intent. This meant that the M Children did not have the necessary intent to remain in Alaska. The informal appeal decision also denied the request to make M.M. the sponsor for the M Children.⁹

³ Ex. 1, p. 7; Ex. 2, pp. 3, 6, 9, 12, 15.

⁴ Ex. 1, pp. 5, 8; Ex. 5, p. 2.

⁵ Ex. 5, p. 2 (Fact 6) and Ex. 6, p. 2 ("The 'move' date was in June of 2022.").

⁶ Ex 1, p. 9.

⁷ Ex. 3, pp. 1 – 5.

⁸ Ex. 4.

⁹ Ex. 5, p. 2 (Fact 10).

D.W. filed a formal appeal on behalf of the M Children. In her formal appeal, she wrote that “the ‘move’ date was in June of 2022.” She further wrote that “Moving was unexpected until June 2022.”¹⁰

III. Discussion

A. Eligibility

In order to qualify for a PFD, a person must be an Alaska resident both on the date of the application¹¹ and during the entire qualifying year.¹² An Alaska resident is someone who is in the state with the intent to remain indefinitely, or someone who intends to return to the state to remain indefinitely when that person’s absence is allowable by statute.¹³ As the individual challenging the Division’s decision, D.W., acting on behalf of her minor children, has the burden of proof.¹⁴

It is undisputed that D.W. was not eligible for the 2022 PFD due to her extended absence from Alaska during 2021, the qualifying year for the 2022 PFD. It is also undisputed that she did not appeal the finding that she was not eligible. As such, she was not an eligible sponsor for the M Children. The PFD regulations specifically address the question of a child’s eligibility when the sponsor is not eligible:

(i) The department will reverse a denial of a child’s permanent fund dividend if the child was denied only due to the ineligibility of the child’s original sponsor and the child’s original sponsor is subsequently determined during processing, at review, at informal conference, at formal hearing, or by a court to be eligible for a dividend.¹⁵

Applying the regulation quoted above, because D.W. chose to not challenge the finding that she was not eligible for the PFD, she will not be found eligible through this proceeding, and as a result, the denial of the M Children’s application must be upheld.

There is an additional reason for upholding the denial of the M Children’s application. That is because the facts show that D.W., the children’s mother and sponsor, was actively looking for a house in Minnesota in 2021 and 2022. In other words, she knew when she applied for her PFD and the children’s PFDs on January 21, 2022, that she would be moving out of

¹⁰ Ex. 6.

¹¹ AS 43.23.005(a)(2).

¹² AS 43.23.005(a)(3).

¹³ AS 43.23.295(7).

¹⁴ 15 AAC 05.030(h).

¹⁵ 15 AAC 23.113(i).

Alaska in 2022. This shows that she did not have the intent to remain in Alaska indefinitely.¹⁶ As the children’s sponsor, her intent is legally considered to be the children’s intent.¹⁷ As a result, the M Children were not eligible to receive the 2022 PFD because they did not have the required intent to remain in Alaska indefinitely.

B. Change of Sponsor

D.W. requested that the M Children’s sponsor be changed to M.M., her adult son. The Division denied that request. The PFD regulations provide that the Division will accept someone other than a parent (natural or adoptive), or legal guardian to be a sponsor for a minor child if there is not a parent/legal guardian to be a sponsor and the proposed sponsor “had lawful and physical custody of the child at the time of application and for the majority of the qualifying year, or must be applying in accordance with a court order.”¹⁸

Under the PFD regulations, M.M. is not eligible to be a sponsor for the M Children for two independent reasons. First, there is no evidence showing that the M Children’s father was not eligible to be a sponsor for the children. In other words, the evidence does not show that it was necessary to have a non-parent/non-legal guardian to sponsor the children. Second, there is no evidence that M.M. had “lawful and physical custody of the [M Children] at the time of application and for the majority of the qualifying year,” or that he was applying pursuant to a court order. D.W. had the burden of proof in this case. She did not meet that burden. Instead, the evidence shows that M.M. was not legally qualified to be a sponsor for the M Children.

IV. Conclusion

The Division’s denial of the M Children’s 2022 PFD applications is AFFIRMED, as is the denial of the request to have M.M. as their sponsor.

Dated: November 22, 2022

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁶ See 15 AAC 23.143(h).

¹⁷ *In the Matter of C., C. & B. W.*, Dept. of Revenue Case No. 030690 at 3 (2004). See also *State v. F. L. A.I.*, 608 P.2d 12, fn. 14 (Alaska, 1980) (minors do not have capacity to contract, minors cannot alone convey property, cannot borrow money, or execute a mortgage, and in some cases may not consent to a medical operation).

¹⁸ 15 AAC 23.113(c)(1) and (h).

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 16th day of December, 2022.

By: Signed
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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