

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

In the Matter of:)	
)	
T.T. and U.T., and)	OAH No. 22-0269-PFD
O.T. and F.T. (minors))	Agency Nos. 2021-051-
_____)	2248/2509/2343/2405

DECISION

I. Introduction

T.T. and U.T. filed timely applications for a 2021 Alaska Permanent Fund Dividend (PFD) for themselves and their two minor children. The PFD Division (Division) denied their applications initially and at the informal appeal level on several grounds, primarily because they had been absent from Alaska for an unallowable reason during the 2020 calendar year.

The T Family requested a formal hearing, which was held by telephone on May 2, 2022, although the T Family did not participate.¹ The Division’s denial is affirmed because the family’s absence from Alaska due to T.T.’s employment with the United States Public Health Service (PHS) in Montana is not an allowable absence.

II. Facts

T.T. is a commissioned officer with the PHS. He works for the PHS as a pharmacist. He moved to Alaska in 2010 with his wife, U.T., and their minor children, O.T. and F.T., when he was transferred to Hospital A medical campus in City A.² The family bought a house in City A and remained there until July 2017, when T.T. was transferred to the Service Unit A operated by the J Health Services, United States Department of Health and Human Services.³ The Service Unit A provides health care services to the Indian Reservation in Montana.⁴ It is not a military base, and there are no active-duty military personnel stationed there.⁵

¹ The T Family did not pick up the phone when they were called to participate in the hearing.

² O.T. was born on 00/00/08, and F.T. was born on 00/00/12. Ex. 1, pp. 15 and 21.

³ Ex. 3, p. 6.

⁴ Ex. 12.

⁵ Ex. 5, p. 2; testimony of Peter Scott.

T.T. and his family members received PFDs for the 2012 through 2020 dividend years. For the 2021 dividend year, T.T. applied online for himself and his sons, listing his physical address as Address A and his principal home as Address B. He indicated that he had been absent from Alaska since 2017, including all 366 days in 2020. He selected the code on the application for “armed forces” as the reason for his absence, stating that he is “active-duty military stationed in Montana.” He identified the end date of his absence from Alaska as November 30, 2021. U.T. also applied online for a PFD, listing the same information on her application as T.T. did.

The T Family submitted additional information during the informal appeal process. They asserted that T.T. was “mandated/ordered to move to a military station in Montana with no respect to his wishes,” “maintains his residency in Alaska as required by federal law in the SERVICE MEMBERS CIVIL RELIEF ACT (SCRA) 1940, 2003),” and is a “member of the military subject to Federal law, Military orders and the UCMJ,” although the orders transferring him to the Service Unit A were not military orders and made no mention of the Uniform Code of Military Justice (UCMJ).⁶ They admitted to maintaining a home in Montana while T.T. was “fulfilling his orders“ but reiterated that their principal home is at Address B. They emphasized their intent to return to Alaska when T.T. “gets orders there” or retires, whichever occurs first.⁷ They identified multiple properties they own and are renting out in City B, including the residence at Address A and five other rental units.⁸

The T Family also claimed the PFD rules had impermissibly changed because they had received PFDs for their prior years living in Montana.⁹ The Division’s eligibility records show that the T Family were deemed eligible in prior years based in part on an excerpt the T Family provided from the UCMJ stating that the code applies to “members of the National Oceanic and Atmospheric Administration, Public Health Service and other organizations,” and an email from E.C., a military pay technician with the Commissioned Corps Compensation office at the national PHS headquarters, stating that T.T. is “subject to

⁶ Ex. 4, p. 3.

⁷ In a July 5, 2021 email to Laura Lancaster of the PFD Division, T.T. stated that he “pay[s] a bundle of property tax” and votes in Alaska. He also said, “I am moving back in the near future” but admitted that he had been denied a request for a transfer back to Alaska a year earlier. Ex. 6, p. 2.

⁸ Ex. 4, p. 3.

⁹ Ex. 7, p. 2.

the UCMJ.”¹⁰ The Division subsequently learned that they had been misinformed, however. The UCMJ excerpt the T Family provided had been altered to remove key language: the UCMJ applies to members of the PHS “when assigned to and serving with the armed forces.”¹¹ Because the Service Unit A to which T.T. had been assigned is a pharmacy run by the Health Services – not a military installation – the email from E.C. was incorrect, and the UCMJ does not apply.¹² Thus, the Division concluded that the T Family were ineligible for a 2021 dividend, and it had been mistaken in finding them eligible for the prior years they lived in Montana.¹³

III. Discussion

A. *Eligibility for 2021 Dividend*

The T Family have the burden of proving by a preponderance of the evidence that they are eligible for PFDs.¹⁴ To be eligible, an applicant must have been physically present in Alaska throughout the qualifying year, or absent only as allowed by AS 43.23.008.¹⁵ One of the allowable absences, specified in AS 43.23.008(a)(3), is for persons serving on, or accompanying as a spouse or dependent someone serving on, “active-duty as a member of the armed forces of the United States.” The qualifying year for the 2021 dividend was 2020.

The statute is explicit in using the term “armed forces” rather than the “uniformed services.” Indeed, the two terms are not equivalent, as reflected in the definitions of those terms in Title 10 of the United States Code, which governs the “Armed Forces.”¹⁶ “Armed forces” is defined as “the Army, Navy, Air Force, Marine Corps, and Coast Guard.” “Uniformed services” is defined as “(A) the armed forces (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service.” These definitions make clear that a member of the PHS is not a member of the armed services. Thus, service in the PHS alone is not an allowable absence –

¹⁰ Exs. 7 and 13.

¹¹ Moreover, the excerpted section of the Code, 10 U.S.C. §802(a)(8), has not been changed since its original adoption in 1956. Ex. 10.

¹² Mr. Scott testified that the Division called E.C. to discuss his email, but he did not return the call.

¹³ Ex. 13.

¹⁴ 15 AAC 05.030(h).

¹⁵ AS 43.23.005(a)(6).

¹⁶ 10 U.S.C. § 101.

a result consistent with prior decisions of the Office of Administrative Hearings (OAH).¹⁷ As a commissioned officer in the PHS, T.T. is a member of the uniformed services, but he is not a member of the armed forces.

The OAH has previously held, however, that members of the PHS with proof that they are effectively under the command of the armed forces and subject to the UCMJ are treated as members of the armed forces for the purposes of AS 42.23.008(a)(3). This was the case in *In the Matter of M. & C.K.*, OAH Case No. 09-0199-PFD (Dep't of Revenue 2009), in which a PHS captain provided orders detailing him to the Coast Guard and notifying him that he was subject to the UCMJ.¹⁸

M & C.K. is distinguishable from the T Family' case. Unlike the military orders of the PHS captain in *M & C.K.*, T.T.'s transfer orders plainly state that he was being transferred to an Indian Health Services pharmacy – not a branch of the armed forces. Moreover, the orders make no mention of the UCMJ at all, much less that T.T. is subject to it. Indeed, the UCMJ is clear that members of the PHS are subject to the UCMJ only “when assigned to and serving with the armed forces,” which is not the case for T.T..¹⁹ Thus, T.T. may not be treated as a member of the armed forces for PFD purposes.

Because T.T. is neither a member of the armed forces, nor may he be treated as such, the allowable absence in 43.23.008(a)(3) does not apply. The T Family did not provide any other basis that would render their absence from Alaska during the 2020 qualifying year allowable. Because they were unallowably absent for more than 180 days during 2020, they are ineligible to receive a 2021 dividend. It is not necessary to decide the other issues presented in this appeal, including whether the T Family maintained their principal home in Montana or Alaska, as their unallowable absence from Alaska categorically disqualified them from receiving a 2021 dividend.

As for the inaccurate information the T Family submitted with their appeal – i.e., the altered version of the UCMJ section and the inaccurate email from E.C. – that information may provide sufficient grounds for the Division to seek repayment of the dividends paid to

¹⁷ See, e.g., *In the Matter of T. and S.W.*, OAH Case No. 06-0427-PFD (Dep't of Revenue 2006); *In the Matter of T.E.*, OAH Case No. 18-1131-PFD (Dep't of Revenue 2019).

¹⁸ See also *ITMO P. & S. M.*, caseload 101665 (Dep't. of Revenue, June 2022).

¹⁹ 10 U.S.C. §802(a)(8).

the T Family for their prior years in Montana. That issue is beyond the reach of this decision, however.

IV. Conclusion

Because the T Family were absent from Alaska for more than 180 days during 2020, and T.T.'s service in the PHS is not an allowable reason to be absent under the PFD program, they are not eligible for a 2021 dividend.

Dated: July 5, 2022

Signed _____
Lisa M. Toussaint
Administrative Law Judge

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 1st day of August, 2022.

By: *Signed* _____
Name: Lisa M. Toussaint
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]