

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

In the Matter of)	
)	
T. J.)	
)	OAH No. 22-0701-PFD
2021 Permanent Fund Dividend)	Agency No. 2021-062-1698
_____)	

DECISION

I. Introduction

T. J.’s application for a 2021 Permanent Fund Dividend (PFD) was denied by the Permanent Fund Dividend Division (Division), both initially and at the informal appeal level. The Division asserted that T. J. failed to establish that he met the eligibility requirements and failed to provide the Division further documentation and information it requested. T. J. asked for a hearing by correspondence, which was later converted to a formal hearing.

Based on the exhibits and testimony at the hearing as well as the information supplemented by the Division following the hearing, T. J. failed to carry his burden of proof in this case to demonstrate that he meets the PFD eligibility requirements. Accordingly, the Division’s decision denying his 2021 PFD is affirmed.

II. Facts

T. J. first applied for an Alaska PFD in 2017. His application was ultimately denied because he failed to timely submit additional documentation requested by the Division to confirm his claimed residency ties to the state.¹

T. J. did not apply for a PFD again until 2021. That application was submitted electronically from an IP address in City A.² In the application, he claimed a residency date of March 20, 2013.³ He also indicated he was in Alaska at the time of the filing, that his principal home was in Alaska, and that he was not registered to vote outside of Alaska.⁴

Following his initial application submittal, T. J. was asked to provide an explanation for why had not filed for a PFD since 2017, and to give as much proof as possible that he took at

¹ Ex. 9.
² Ex. 1; Testimony of Peter Scott.
³ Ex. 1, p. 5; Ex. 17, p. 3.
⁴ Ex. 1, p. 3; Ex. 17, p. 3.

least one step beyond mere physical presence in Alaska to establish Alaska residency.⁵ He failed to timely respond to the request and as a result, his application was denied. In the denial, T. J. was given an opportunity to request an informal appeal and asked again to supply the above-referenced information.⁶

Next, T. J. submitted a request for an informal appeal, an appeal application fee, and copies of a Medicare premium bill and Social Security Administration documentation in his name and sent to his City A address.⁷ In his informal appeal, he explains that he is a business owner in City A and has lived in Alaska for the past nine years.⁸

T. J.'s informal appeal was subsequently denied. In doing so, the Division asserted that he failed to provide the requested information and documentation and failed to prove that he met the definition of "state resident" for the entirety of the 2020 qualifying year.⁹

T. J. timely requested a formal hearing. In doing so, he checked the box seeking a formal hearing by written correspondence.¹⁰ Shortly after, T. J. also submitted a 2021 adult prior year non-filer form. In it, he disclosed he had been absent from Alaska for a portion of 2020. However, because of an apparent typographical error concerning a provided date, it was unclear regarding how many days he was absent from Alaska in 2020.¹¹

Next, the Division notified T. J. that it was still seeking further information and documentation from him, including, an additional absences form, an Alaska Airlines frequent flyer mileage statement and a frequent flyer mileage statement for other airlines.¹² Other than the 2021 adult prior year non-filer form that T. J. had already provided, it does not appear that he responded any further to this request.

After the Department of Revenue's referral of the case to the Office of Administrative Hearings, a notice of hearing by correspondence was issued on August 15, 2022. It required both the Division and T. J. to submit any additional documents for consideration by September

⁵ Ex. 3.

⁶ Ex. 4.

⁷ Ex. 5.

⁸ Ex. 5, p. 13.

⁹ Ex. 6.

¹⁰ Ex. 7.

¹¹ Ex. 7 at p. 3.

¹² Ex. 8.

14, 2022, and imposed a deadline of September 28, 2022, for any responsive materials.¹³ Although the Division submitted both a position statement and exhibits, T. J. did not file any additional documentation. Based on information in the record, it appeared that English may not be T. J.’s first language. To confirm that language was not an issue in this case and to address next steps, including the potential of converting the hearing by correspondence into a telephonic hearing, a status conference was held.¹⁴

At the status conference, it was confirmed that Korean is T. J.’s first language. While T. J. can both speak and read some English, he has difficulty with the more professional, legal, and technical terms. It was also confirmed that that T. J.’s difficulty with English may have been at least partially responsible for his not having timely supplied supporting documents, or a position statement, in response to the initial notice of hearing by correspondence. Accordingly, and based on the Division’s non-objection, the case was rescheduled for telephonic hearing to occur on Tuesday, November 8, 2022, and that a Korean interpreter would be provided.¹⁵

Both T. J. and Division representative, Peter Scott, participated at the subsequent hearing, as did a Korean interpreter from CTS Language, Link, Inc. T. J. and Mr. Scott provided testimony under oath.

At the hearing, the Division asserted that T. J.: 1) does not meet Alaska’s residency definition; 2) is ineligible for a PFD due to his Washington residency ties; 3) maintained his principal home in City B during the 2020 qualifying year, 4) has not provided the Division with the information requested; and 5) has not met his burden of proof in this case. Specifically, the Division’s case was based largely on the contention that, “T. J. was *effectively maintaining a claim of residency in Washington State through the ‘Foreign Corporations’ he had registered with the Alaska Division of Corporations, Business and Professional Licensing from June 24, 2009 through at least November 12, 2021.*”¹⁶

In support of its position, the Division provided documents and testimony establishing that T. J. held ownership interests in Washington business entities that were later registered to

¹³ Notice of Hearing by Correspondence (August 15, 2022).

¹⁴ Order for Status Conference (September 27, 2022).

¹⁵ Order for Telephonic Hearing (October 4, 2022).

¹⁶ Position Statement (September 14, 2022) (emphasis added); Peter Scott Testimony.

do business in Alaska as foreign corporations. On some of the filings associated with these entities, T. J. identified his mailing address as his City B home and in others, at his address in City A where his business was located and where he was also living.¹⁷

T. J. testified and credibly established that: 1) during the 2020 qualifying year, he resided in Alaska for all but one to two months; 2) he does own a home in Washington that was occupied in 2020 by his daughter; 3) his City A business, a motel, is owned by one of his business entities; 4) his vehicle is also licensed through his business entity; 5) although he has tried to obtain an Alaska driver's license twice, he failed the exam on both occasions and as such, continues to maintain a Washington driver's license; and 6) he claims Washington as his domicile for federal income tax purposes.¹⁸

At the conclusion of the hearing, the Division was requested to supplement the record with a copy of its 2021 adult web application form, including the full text of all questions asked in the application. Both parties were also given an opportunity to supplement the record with 1) legal authority addressing whether an individual's ownership interest in a foreign or non-Alaska business entity has any bearing on the individual's state of legal residency; and 2) argument or additional documents bearing on the accuracy of T. J.'s testimony concerning the status and location of his voter registration from 2018 to date, but most importantly, during the 2020 calendar year.¹⁹ The Division timely provided supplemental information and documents. However, it did not provide any documents specifically addressing whether an individual's ownership in a foreign or non-Alaska business entity has any bearing on an individual's state of legal residency.²⁰

III. Discussion

The PFD eligibility rules are technical and strict. Even someone who has clearly established Alaska residency can be disqualified from receiving a PFD if they are absent under the wrong circumstances or maintain certain residency ties to another state.²¹ One of the strict

¹⁷ Ex. 12; T. J. Testimony; Peter Scott Testimony.

¹⁸ Presently T. J.'s business entity is an Alaska Corporation but was formerly a Washington Corporation. Position Statement (September 14, 2022) at 2; Ex. 12; T. J. Testimony; Peter Scott Testimony.

¹⁹ Order Regarding Supplementation of the Record (November 9, 2022).

²⁰ Division Supplemental Briefing (November 21, 2022); Division Supplemental Exhibits 16-19 (November 21, 2022).

²¹ 15 AAC 23.143(a).

eligibility requirements is that a person must not have claimed to be a resident of another state for tax purposes during the eligibility year.²²

Here, by his own admission and testimony at hearing, T. J. has confirmed that during the 2020 qualifying year, he identified the State of Washington as his domicile on his federal income tax return.²³ His doing so makes him ineligible for a dividend per the explicit provisions of 15 AAC 23.143(d)(5). That regulation provides:

An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has filed a resident or part-year resident income, excise, or personal property tax return in another state or country and the claim of residency on the return is for any period of time beginning January 1 of the qualifying year through the date of application, unless the individual. . .²⁴

15 AAC 23.143(d)(5) goes on to note two exceptions to its application in instances where an applicant was required by another state or country to claim resident tax status even though the individual was a state resident as defined in AS 43.23.095 or filed an amended return claiming non-resident tax status and provides proof to the department that the amended return was filed in the other state or country. However, neither of those exceptions were asserted by T. J. nor was any evidence offered to support their application. Consequently, on the undisputed facts, T. J. is ineligible for a 2021 PFD based on application of 15 AAC 23.143(d)(5).

It is also important to note what T. J.'s denial of a 2021 PFD is not based on. Here, contrary to what the Division has asserted there is no correlation or legal support for the position that, simply by possessing an ownership interest in a non-Alaska business entity, T. J. has maintained residency ties to another state. Holding ownership or management positions in legal entities formed outside of the State of Alaska has no bearing whatsoever on a person's residency status. There is simply no legal support for this position.

As an example, Coca-Cola Corporation is a business entity that is formed and registered outside of the State of Alaska. From an evidentiary perspective, it would carry zero weight concerning the location of T. J.'s domicile if he owned 1 share or 1,000 shares of Coca-Cola Corporation, or if he was the President and CEO of Coca-Cola as opposed to simply a

²² 15 AAC 23.143(d)(5).

²³ T. J. Testimony.

²⁴ 15 AAC 23.143(d)(5).

shareholder. Further, the fact that in this case, T. J. may have, in some instances, used the address of his Washington home in association with his Washington Corporate filings and his Alaska address in association with other Washington Corporation filings, establishes nothing concerning his residency.²⁵ This is due to black letter law confirming that a corporate entity is considered separate and distinct from its shareholders.²⁶

As such, in this instance, it matters not that T. J. may have formed Washington business entities, used an address of real property he owns in Washington in association with those entities, had a business in Alaska with real property owned by a Washington entity and that his vehicle might have been owned by a Washington entity.²⁷ What is important is that, during the 2020 eligibility year, T. J. continued to identify Washington as his domicile for federal income tax purposes contrary to the eligibility requirements set forth in 15 AAC 143(d)(5).

IV. Conclusion

For the reasons set forth herein, the Division's decision denying T. J.'s 2021 PFD application is AFFIRMED.

DATED this 23rd day of November 2022

Signed

Z. Kent Sullivan
Administrative Law Judge

²⁵ Ex. 12.

²⁶ *Eagle Air, Inc. v. Corroon and Black/Dawson and Co. of Alaska, Inc.*, 648 P.2d 1000, 1004 (Alaska 1982).

²⁷ Ex. 12; T. J. Testimony.

Adoption

This Decision 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 20th day of December, 2022.

By: Signed
Signature
Z. Kent Sullivan
Name
Administrative Law Judge
Title

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