

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

In the Matter of)	
)	
D. J. & E. J.)	
)	
<u>2022 Permanent Fund Dividends</u>)	OAH No. 22-0938-PFD Agency Nos. 2022-028-7158/7327

DECISION

I. Introduction

E. J. & D. J. were found ineligible for the 2022 Permanent Fund Dividend (PFD) because the PFD Division determined they were out of state for too large a portion of the qualifying year and did not fall within the statutory provisions for allowable absences. After unsuccessfully pursuing an informal appeal, E. J. & D. J. appealed to this tribunal. Their case was heard on January 10, 2023.

E. J. & D. J. had an excellent, health-related reason for their extended absence in 2021. Nonetheless, the couple still do not fit within the absence rules as the Legislature has framed them.

II. Facts

E. J. & D. J. are longtime Alaskans who, until 2022, had received PFDs every year since 1984.¹ Now long past retirement age, they spend about half the year in a small community west of City A, Arizona.² They keep careful track of the length of their absence in an effort not to exceed the 180 days that is usually the maximum to avoid losing PFD eligibility. When back in Alaska, they live at their home in Anchorage.

In 2020, for the first time, E. J. & D. J. exceeded the 180-day threshold because of Covid-19 issues that interfered with their travel. However, due to a special act of the Alaska Legislature (SB 241, discussed below), they nonetheless retained eligibility for the next year’s dividend.

This case turns on how E. J. & D. J. spent 2021. There are no material facts in dispute.

E. J. & D. J. began 2021 out of state, completing the winter in Arizona. They returned to Alaska on April 27, 2021. They left the state again on October 11, fully intending to return by

¹ Ex. 1, pp. 6, 12.
² Hearing testimony.

air from City A on December 13, 2021.³ They had purchased tickets for that date. If they had returned as planned, the total days outside the state during 2021 would have been 179.

When E. J. & D. J. left Alaska, the state had the highest rate of Covid-19 of all 50 states, and multiple Anchorage-area hospitals were at surge capacity.⁴ The E. J. & D. J. seem to have expected this situation to improve over the next two months. It did, but as December 13 approached, the Covid-19 impact on hospitals in Anchorage continued to be significant, resulting in “delays in admitting patients.”⁵

E. J., who is 80, has significant health issues and needs ready access to hospital care. E. J. & D. J.’s adult children had a friend who suffered a stroke due to inability to get a bed in an Anchorage hospital during a Covid surge, and they felt it would be unwise for their parents to return while the local hospitals were stressed. On the advice of their children, E. J. & D. J. stayed in Arizona through the end of the year. This caused them to be absent from the state a total of 198 days in 2021.

During the year, E. J. had minor skin cancer surgery in Arizona. This occurred during April, and it was not responsible for more than a brief portion of the absence from Alaska, nor for the failure to return in December. When they applied for their 2022 dividends, E. J. & D. J. appropriately attributed the whole of their 198-day absence to vacation.⁶ They made a note, however, that they would have returned on December 13 except that it did not seem safe to return then.

The PFD Division does not dispute that E. J. & D. J. made a rational and wise decision, based on health, when they decided to remain in Arizona.

III. Discussion

The qualifying year for the 2022 dividend was 2021.⁷ In order to qualify for a PFD, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.⁸ There are two of the allowable absences that potentially apply to E. J., and two that potentially apply to D. J.

³ *Id.*; Ex. 3, p. 6.

⁴ Ex. 3, p. 4.

⁵ Ex. 3, p. 5.

⁶ Ex. 1, pp. 5, 10.

⁷ AS 43.23.295(6).

⁸ AS 43.23.005(a)(6).

One of the specifically allowable absences is an absence for “any reason consistent” with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.⁹ Since both applicants were absent for more than 180 days, this allowable absence cannot, by itself, save their eligibility for the dividend.

The second allowable absence that might apply to E. J. is an absence “receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician.” This provision is found in subsection (a)(5) of the statute. This absence does not have a maximum number of days. However, the medical allowable absence brings with it a limitation: A person who claims a medical absence *cannot* add onto it the full 180 days of the open-ended allowance discussed above. Instead, a person who claims the medical absence can have no more than 45 additional (non-medical) days of absence under the open-ended allowable absence. This is because Alaska Statute 43.23.008(a)(17)(C) limits the catchall “any reason consistent” absence to “45 days in addition to any absence or cumulative absence under (4) – (16) of this subsection.”¹⁰

The second allowable absence that might apply to D. J. is an absence “accompanying another eligible resident who is absent for a reason permitted under . . . (5) . . . of this subsection as the spouse . . . of the eligible resident.” This provision is found in subsection (a)(13) of the statute. This absence likewise does not have a maximum number of days. However, the spousal absence likewise brings with it a limitation that limits its usefulness for D. J. A person who claims the spousal absence in (a)(13) *cannot* add onto it the full 180 days of the open-ended allowance discussed at the beginning. Instead, a person who claims this absence can have no more than 45 additional days of absence under the open-ended allowable absence. This is, again, because Alaska Statute 43.23.008(a)(17)(C) limits the catchall “any reason consistent” absence to “45 days in addition to any absence or cumulative absence under (4) – (16) of this subsection,” and subparagraph (13) falls within that span.¹¹

Because of the way these two provisions are structured, even if the whole of E. J. & D. J.’s absences during April 2021 were attributed to receiving and recovering from the minor skin cancer surgery, and even if the days of absence after December 13 were also somehow attributed to medical treatment, there would still be more than 160 days that would have to be attributed to

⁹ AS 43.23.008(a)(17)(A).

¹⁰ AS 43.23.008(a)(17)(C).

vacation. That exceeds the 45 days that a person can attribute to that kind of absence if claiming one of the medical-related absences.

A final note is in order regarding the legislative provision that preserved E. J. & D. J.'s eligibility in 2021, SB 241. SB 241 was emergency legislation rushed through in the closing days of the 2020 legislative session to mitigate the impact of the coming pandemic. Section 16 of the legislation enabled individuals who were absent from the state solely because of conduct in mitigation of Covid-19 to preserve their eligibility in spite of that absence.¹² However, SB 241 provided—in its own text—that Section 16 would be repealed as of no later than November 15, 2020.¹³ Thus, it had no applicability in 2021, the qualifying year at issue in this case.

In short, there is no provision of law that covers E. J. & D. J.'s 198-day absence in 2021 and allows them to remain eligible for the following year's PFD. However justifiable and wise their decision to go to and stay in Arizona may have been, it had the unfortunate effect of putting them outside the eligibility criteria for the PFD in 2022.

IV. Conclusion

E. J. & D. J.'s extended absences make them ineligible for the 2022 PFD. They remained Alaska residents, and nothing in this decision precludes them from eligibility for future PFDs.

DATED this 13th day of February, 2023.

By: *Signed* _____

Christopher Kennedy
Administrative Law Judge

¹¹ AS 43.23.008(a)(17)(C).

¹² The legislation is in the record at Ex. 7.

¹³ FCCS SB 241, Sec. 34 (Ex. 7, p. 26).

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

DATED this 10th day of March, 2023.

By: Signed
Christopher Kennedy
Administrative Law Judge

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