

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

In the Matter of	)	
	)	
H. J. & X. J.	)	OAH No. 23-0487-PFD
	)	Agency No. 2022-065-0687/0688
<u>2022 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

H. J. and X. J. applied for a 2022 Alaska Permanent Fund Dividend (PFD). After receiving their application, the Permanent Fund Dividend Division issued a letter denying the application as H. J. and X. J. had received a homestead tax exemption outside Alaska.<sup>1</sup> The Division sustained the denial on informal appeal.<sup>2</sup> H. J. and X. J. filed a timely formal appeal and the assigned administrative law judge conducted a telephonic hearing on September 20, 2023.

Because the text of Minnesota’s homestead determination statute does not require that both owners be residents of Minnesota to receive a homestead property tax exemption on residential property in that state, the Division’s denial is reversed and H. J. and X. J. are eligible for the 2022 dividend.

**II. Facts**

H. J. had been an owner of a house in City A, Minnesota since 1999.<sup>3</sup> In 2003, H. J. and X. J. received a homestead tax exemption on the property.<sup>4</sup> That homestead tax exemption continued to renew, without further application, until the home was sold.<sup>5</sup> The couple’s daughter, K. O., had grown up in the home and, with the exception of periods during her schooling, had lived in the home until after her marriage in 2019.<sup>6</sup>

In November of 2019, H. J. and X. J. moved to Alaska so H. J. could serve as the pastor of a church in City B.

---

<sup>1</sup> Ex. 4.  
<sup>2</sup> Ex. 6, pp. 1-1.  
<sup>3</sup> Ex. 9, p. 1.  
<sup>4</sup> Ex. 10, p. 1.  
<sup>5</sup> H. J.’s testimony.  
<sup>6</sup> H. J.’s testimony.

K. O.—the daughter—is a Physician Assistant who completed her training at the Mayo Clinic. During her training, she developed an issue with one of her knees that required surgery.<sup>7</sup> Despite accepting a job in, and moving out to, Washington State in 2019, K. O. had scheduled a surgery on her knee at the Mayo Clinic for the fall of 2020.<sup>8</sup> Accordingly, despite their own move, H. J. and X. J. delayed selling their home in City A so that K. O. could use it to receive and recover from the planned surgery.

In September of 2020 K. O. moved back into her childhood home with her Husband.<sup>9</sup> She remained in the home while she recovered from surgery, leaving the home December 27, 2020.<sup>10</sup> H. J. testified that no one sells a home in Minnesota in the winter, but they were able to sell their home the following summer, June 11, 2021.<sup>11</sup> H. J. and X. J. did not receive a homestead tax credit from Minnesota after that date.<sup>12</sup> H. J. contacted the tax office for City A, County A Assessment Services, and requested to repay the homestead tax exemption. H. J. was informed the county did not have a procedure that would allow for that.<sup>13</sup>

### III. Discussion

Under 15 AAC 23.143(d)(6), in effect since 1993, eligibility for the Alaska Permanent Fund dividend is denied to individuals who claim certain property tax exemptions outside of Alaska. As originally promulgated, the regulation denied eligibility to individuals who “claimed a homestead property tax exemption in a state other than Alaska.”<sup>14</sup> It was amended in 1999 to deny eligibility to individuals who claimed or maintained a claim<sup>15</sup> and in 2000 to extend to exemptions claimed or maintained in another country.<sup>16</sup> It was amended again in 2008, to require that the exemption be one “that required the individual [claiming or maintaining it] to be a resident of...the state or country [providing the exemption].”<sup>17</sup> Finally, the regulation was

---

<sup>7</sup> H. J.’s testimony.

<sup>8</sup> H. J.’s testimony.

<sup>9</sup> H. J.’s testimony.

<sup>10</sup> Ex. 15, p. 2.

<sup>11</sup> H. J.’s testimony.

<sup>12</sup> Ex. 9.

<sup>13</sup> H. J.’s testimony.

<sup>14</sup> Eff. 1/1/1993, Register 124, am. 6/26/1993, Register 126, am. 12/24/1993, Register 128.

<sup>15</sup> Am. 1/1/1999, Register 148. That an individual continues to receive the exemption does not necessarily mean they have “maintained” the claim, within the meaning of 15 AAC 23.143(d)(6). See In Re L.H., OAH No. 07-0324-PFD (Commissioner or Revenue 2007) at 4, (denial of dividend reversed based on applicant’s “belief the exemption was based on owning residential property”).

<sup>16</sup> Am. 1/1/2000, Register 152.

<sup>17</sup> Am. 1/1/2008, Register 184.

amended in 2009 to extend to homeowner's exemptions,<sup>18</sup> and in 2010 to provide for eligibility for individuals who delete the claim of residency.<sup>19</sup> Subsequent amendments to 15 AAC 23.143 have had no impact on the meaning of subsection (d)(6).

Statutes and regulations are interpreted by looking at three factors: the language of the regulation, the regulatory history, and the purpose behind the regulation.<sup>20</sup> Although Alaska no longer strictly applies the “plain meaning” rule of statutory construction, the clearer the regulatory language, the more convincing any contrary regulatory history must be to overcome the plain language adopted.<sup>21</sup> The regulation in this case is straightforward and the phrase, “...that required the individual to be a resident of that state or country,” is grammatically direct.

As the current regulation clearly states, and the Commissioner has held in other cases, an individual who claims or maintains a homestead exemption in another state is ineligible *only if* the exemption required that the individual to be a resident of the other state.<sup>22</sup> The history of amendments to the regulation also make clear that where the statutory text of a homestead tax exemption statute does not require both homeowners to be residents of that state, 15 AAC 23.143(d)(6) does not apply.<sup>23</sup>

In this case, H. J. and X. J. certainly did not *claim* the homestead exemption in 2021. The only application in the record is from October 20, 2003.<sup>24</sup> H. J.’s testimony was that, after the initial application, the homestead exception continued to renew. Like many property owners, once he received the exemption, he did not give it a second thought. H. J. further testified that he is not a sophisticated real estate investor, and that he was simply not aware of the other options under Minnesota’s tax exception statute and relied on the advice of his real estate agent to maintain the exemption prior to the sale of the property.<sup>25</sup>

---

<sup>18</sup> Am. 1/1/2009, Register 188. This amendment in effect codifies a 2008 decision. See *In Re M. & V. E.*, OAH No. 07-0650-PFD (Commissioner of Revenue 2008) (rejecting applicant’s argument that Michigan municipal “homeowner’s principal residence exemption” is not a “homestead property tax exemption” within the meaning of 15 AAC 23.143(d)(6)).

<sup>19</sup> Am. 1/1/2010, Register 192.

<sup>20</sup> *Western Star Trucks, Inc. v. Big Iron Equip. Serv., Inc.*, 101 P.3d 1047, 1050 (Alaska 2004).

<sup>21</sup> *City of Valdez v. State*, 372 P.3d 240, 248 (Alaska 2016); *Benavides v. State*, 151 P.3d 332 (2006).

<sup>22</sup> *In Re N.B.*, OAH No. 13-1808-PFD (Commissioner of Revenue 2014), at 2 (“...an individual who claims or maintains a homestead exemption in another state is ineligible only if the exemption required that individual to be a resident of the other state”).

<sup>23</sup> See *In Re N.B.*, *supra*.

<sup>24</sup> Ex. 10, p. 1.

<sup>25</sup> This is not a case where H. J. and X. J. received a massive tax benefit from another state and are now attempting to ‘double dip’ on benefits. H. J. testified to his desire to repay the difference between the homestead exemption and what his property bill would have been otherwise, but he was advised by the county that he was

Minnesota’s homestead tax exemption is found in Minnesota Statute 273.124.<sup>26</sup> The statute allows for several different circumstance for claiming a homestead credit that do not require the individual to be a resident. For instance, 273.124(e) allows a married individual to claim the homestead credit even if their spouse is absent and no longer a resident. In previous decisions the Commissioner has held that a statute which only requires one spouse to be a resident does not create a barrier under 15 AAC 23.143(d)(6).<sup>27</sup> Subsection (c) also grants a homestead exemption if the property is used as a primary residence by a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece of the homeowner, even if the owner is no longer a resident. It is not clear from the record if the couple’s daughter would have qualified as a Minnesota resident at the time she was recovering in the home. However, it’s not necessary to determine if H. J. and X. J. would have qualified for homestead property tax exemption through other means, as under Minnesota law, a person who is no longer a Minnesota resident may receive the homestead property tax exemption so long as a relative of that person resides in the Minnesota property.

During the hearing the Division argued that H. J. and X. J. would have been required to file a new application for a homestead exemption claiming relative occupancy, with their daughter’s information and signature. Further, the Division argued because H. J. and X. J. never submitted a separate application with their daughter claiming the relative homestead exemption, that 15 AAC 23.143(d)(6) still serves as an absolute barrier to H. J. and X. J.’s PFD eligibility. The Division based this argument on a chain of emails between the Division’s representative and B. B., a Land Records Technician with County A Assessment Services.

**Mr. Scott, Division’s representative:**

“H. J. stated his daughter, K. O., temporarily resided in the above property for approximately 3 months from February to April, 2021. His daughter residents in the City C, Washington area and was undergoing medical treatment in City B, Minnesota. Was K. O., required to submit a “Relative Homestead” form, and did your office receive such a request?”<sup>28</sup>

**B. B., Land Records Technician, County A Assessment Services:**

---

unable to do so. For the 2021 exemption, H. J. and X. J. only received a maximum benefit of \$130. Given that H. J. and X. J. sold their home halfway through 2021, depending on how their closing was done, they may not have received that full amount. In contrast, the 2022 PFD was \$3,284 per resident, a total of \$6,568 for the couple. That would amount to a benefit more 50 times the maximum tax deduction the couple received in Minnesota.

<sup>26</sup> Ex. 14.

<sup>27</sup> See *In Re N.B.*, *supra*.

<sup>28</sup> Ex. 11, p. 4.

“While his daughter may have occupied the property, we did not receive a relative homestead application. In County A, one must own and occupy to apply for homestead. Should a qualifying relative occupy the property and consider the property their primary residence, they may complete a homestead application. This is an option to the homeowner.”<sup>29</sup>

The Division read B. B.’s answer to create a requirement that H. J. and X. J. file a new application for a homestead exemption. A review of Minnesota Statute 273.124 shows no statutory requirement that a homeowner amend their homestead exemption when the basis for an exemption exists, only a requirement that the homeowners notify the tax office when a good faith basis no longer exists. Further, the application provided in exhibit 10 addresses both owner-occupied homesteads and relative-occupied homesteads. The provided application does not mention a requirement that a new application be submitted if the basis for a homestead exemption changes, only a requirement to notify the assessor if the property is no longer eligible for a homestead exemption. Given the lack of statutory support, the key word in B. B.’s reply is “may”, meaning that a homeowner *may* complete a new homestead application with the information of the relative occupying the property, but they are not required to. This is reading is further supported by the very next sentence, “[t]his is an option to the homeowner.”

Here, the question is not, did H. J. and X. J. receive their homestead credit based on their daughter occupying the house, or even, if their daughter would have qualified as a Minnesota resident. The only question 15 AAC 23.143(d)(6) asks of us is, does Minnesota’s statute *require* that the individual to be a resident? The answer to that question is clearly, no. While 15 AAC 23.143(d)(6) is not a barrier to H. J. and X. J.’s eligibility, they must still demonstrate an intent to establish and maintain residency to be eligible for a PFD.<sup>30</sup>

H. J. and X. J. moved to Alaska, November 1, 2019.<sup>31</sup> Since moving to Alaska, H. J. and X. J. have become deeply invested in their local community. H. J. is the pastor at a church in City B, and X. J. volunteers weekly at the local library.<sup>32</sup> As proof they provided H. J.’s paystubs, and a letter about X. J.’s volunteering duties. They also provided proof of their moving expenses, their rental agreement, and proof that their vehicle was permanently registered in Alaska February 4, 2020.<sup>33</sup> Since arriving in City B, X. J. has also served on a local jury. H.

---

<sup>29</sup> *Id.*

<sup>30</sup> 15 AAC 23.143

<sup>31</sup> Ex 2, p 4.

<sup>32</sup> Ex 3.

<sup>33</sup> *Id.*

J. testified credibility that Alaska is going to be their permanent home, until God "...calls us elsewhere ...".<sup>34</sup> Given these facts, H. J. and X. J. have proven, by a preponderance of the evidence, that they had the intent to remain residents of Alaska indefinitely at the time of their 2022 PFD application.

#### **IV. Conclusion**

H. J. and X. J. received a homestead property tax exemption that did not require them to be a resident of the state providing the exemption. Therefore, they are not disqualified from eligibility for the 2022 dividend by 15 AAC 23.143(d)(6). H. J. and X. J. have further proven that they have the intent to remain residents of Alaska indefinitely. The Division's denial of their application is REVERSED. The application of H. J. and X. J. for a 2022 Alaska Permanent Fund dividend is GRANTED.

DATED: October 9, 2023.

*Signed*  
\_\_\_\_\_  
Eric Salinger  
Administrative Law Judge

---

<sup>34</sup> H. J.'s testimony.

## 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 24<sup>th</sup> day of November, 2023.

By: Signed  
\_\_\_\_\_  
Signing on behalf of Commissioner Crum  
by express authorization:  
Eric Salinger  
Administrative Law Judge

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