

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

In the Matter of)	
)	
L. E.)	OAH No. 23-0701-PFD
)	Agency No. 2023-007-1886
<u>2023 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

This case raises the implications upon Permanent Fund Dividend (PFD) eligibility when an individual prepares to move to Alaska over a period straddling two calendar years, and keeps living in a home in another state after having begun the process of moving permanently to Alaska.

L. E. is a pastor who came to Alaska in August of 2021 to make arrangements for a family move to the state, and who made firm commitments before the end of 2021 to live and work in Alaska. However, he did not move out of his principal home in another state until just after the turn of the year, and did not complete his move to Alaska until mid-January of 2022. He subsequently applied for the 2023 dividend. The PFD Division denied his application on the basis of failure to establish residency prior to the beginning of 2022, the qualifying year. That result was upheld at the informal appeal level, with additional grounds (discussed below) added for denial. L. E. requested a formal hearing. He received that hearing on December 27, 2023 before then Chief Administrative Law Judge Frederick. Upon her retirement on March 1, 2024, the case was transferred to the undersigned, who listened to the full recording of the hearing.

The PFD Division’s denial of L. E.’s application is affirmed because he was disqualified by keeping his principal place of residence in another state during a portion of the qualifying year, albeit a very small portion. Further, under the holding of a newly-issued Alaska Supreme Court Case on state residency, he could not prove that his state residency began prior to the beginning of the qualifying year.

II. Facts

Most of the facts in this case are not in dispute. L. E. and his spouse lived and worked in Alaska from 2016 to 2018, achieving PFD eligibility at that time. However, L. E. then accepted

work as a pastor in City A, Pennsylvania, holding that full-time job from May 28, 2018 to January 5, 2022.¹ He owned a home nearby and lived in it essentially full-time.

During 2021, L. E. made firm plans to move back to Alaska for pastoral work. During a four-day visit to the state in late August,² he obtained an Alaska driver's license,³ opened a post office box, and purchased an expensive off-road vehicle in City B.⁴ He arranged a location at the church where belongings could be held and shipped.⁵ During the remainder of 2021, he physically returned to Alaska only once—another four-day visit from October 8-12.⁶ The August visit was followed, during the fall, by a formal application to his church for an Alaska assignment (granted in October⁷), fundraising in the lower-48 to support the Alaska mission, and committing to purchase of a snowmachine in City B.⁸ In November, free church housing was available and set aside for him in City B, although he had not moved into it (a different, better location was later substituted before L. E. and his family moved in).⁹ Before the end of the year, all preparations were in place for him to begin a full-time pastorate in City B in mid-January of 2022.

There is no question that, before the end of 2021, L. E. had formed the firm intention to locate himself in Alaska and remain indefinitely, severing his Pennsylvania residency. Indeed, it is more likely than not that he held this intent in late August, when he was physically present in the state (albeit briefly) and began taking steps highly inconsistent with staying in Pennsylvania. L. E. subsequently filed a part-year tax return in Pennsylvania consistent with this intent to change residency, reporting that his Pennsylvania residency ended on August 20, 2021.¹⁰

As mentioned previously, L. E. owned a home near City A, Pennsylvania. At some time in December of 2021 (the document bears two dates), he executed a month-to-month rental agreement under which a tenant was to take occupancy of that home on January 7, 2022. L. E. continued to work in City A through January 5, 2022.¹¹ His testimony indicates that he continued to live in the Pennsylvania residence through the month of December, 2021, and it is

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² The visit was from August 23-27. Ex. 6, pp. 4-5.

³ Ex. 6, p. 32. He was somehow able to do this without having a principal residence in the state.

⁴ Ex. 2, p. 3.

⁵ In his testimony, he refers to this as an “abode,” but he seems to misunderstand that term. No true living space seems to have been set aside for him until November.

⁶ Ex. 6, pp. 7-8.

⁷ Ex. 6., p. 12.

⁸ Testimony of L. E. The commitment was a \$15,000 deposit placed in November 2021.

⁹ Ex. 6, p. 12; Ex. 9; testimony of L. E.

¹⁰ Ex. 2, p. 40.

therefore certain that he vacated it sometime in January. The exact date he moved out is uncertain, although it was presumably prior to the 7th, the occupancy date for his tenant. He then spent a few days staying with his parents before traveling to Alaska, arriving on January 11 or 12, 2022 to take up his new position. He and his family began living in City B on January 12, 2022.¹²

L. E. has lived and worked in Alaska ever since, and has purchased a home in the state.

III. Discussion

In this formal appeal of the denial of the 2023 PFD, the applicant has the burden of proof.¹³ This means the applicant must demonstrate—through evidence—each aspect of eligibility on the basis of which the PFD Division has denied eligibility.

In the present case, the Division does not question that L. E. meets many aspects of eligibility. The case turns on his status in the early weeks of the qualifying year. The qualifying year for the 2023 dividend was 2022.¹⁴

There are two broad concepts that have been at issue in this case. One is the issue of residency—applicants must become Alaska residents before the qualifying year begins, and remain so for the entire qualifying year (and beyond it, up to the date of application). The Division contends that L. E. did not become an Alaska resident until January 12, 2023, which would be just a little bit too late to have been a resident for the *entire* qualifying year. L. E. contends that he became an Alaska resident during his four-day visit in August of 2021.

The second concept is the operation of certain automatic disqualifiers. In order to make this enormous program easier to administer, certain acts have been identified that disqualify a person from a particular year's PFD, without examining the broader and more complicated issue of residency. The disqualifiers are bright-line rules that deprive the person of eligibility for that year's dividend. The disqualifiers are related to residency, but they are not synonymous with it.¹⁵ If a person commits—during the qualifying year or during the application year up to the date of application—one of the disqualifiers listed in regulation 15 AAC 23.143(d), the person is not eligible. These disqualifiers are things like registering to vote in another state, accepting full-

¹¹ Ex. 2, p. 13.

¹² Ex. 9.

¹³ 15 AAC 05.030(h).

¹⁴ AS 43.23.295(6).

¹⁵ See, e.g., *In re S.M.*, OAH Case No. 09-0097-PFD (Dep't of Revenue 2009), Decision at 2-3 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5338>); *In re C.G.*, OAH Case No. 11-0121-PFD (J. Burnett, Dep. Comm'r of Revenue, 2011) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5540>).

time permanent employment in another state, or maintaining one's principal home in another state without being on an allowable absence.

A. Acceptance of Permanent Employment

A department regulation, 15 AAC 23.143(d)(4), creates a bright-line rule that a person "is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application" the person has "accepted full-time, permanent employment in another state or country." This rule applies unless the person is out of state on one of the long-term allowed absences (such as military service), none of which L. E. has claimed or could claim. The Division contends that it disqualifies L. E. because his job in Pennsylvania did not end until January 5, 2022.

The rule in 15 AAC 23.143(d)(4) applies to continuing employment, not just initial acceptance, because if a person persists in full-time, permanent employment out-of-state the person is "accepting" continued, disqualifying employment. However, the Department has held that once a person in permanent employment gives notice, the permanent employment is transformed into temporary employment.¹⁶ Thus, even though L. E. continued to hold his long-term, full-time job in Pennsylvania until January 5 of the qualifying year, by the time the qualifying year started his transfer from one church to another had been arranged and the Pennsylvania job was no longer "permanent." 15 AAC 23.143(d)(4)'s bright-line rule therefore does not disqualify him.

B. Location of Principal Home

Another department regulation, 15 AAC 23.143(d)(1), creates a bright-line rule that a person "is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application" the person has "maintained the individual's principal home in another state or country." Again, this rule applies unless the person is out of state on one of the long-term allowed absences (such as military service) that L. E. is unable to claim.

This bright-line rule is wholly disqualifying to L. E. He based himself continuously in the house he owned in Pennsylvania throughout 2021 and up to approximately January 5, 2022, when he completed his job there. The rental agreement by which he would turn the home over to a tenant expressly delayed occupancy by the tenant until January 7. L. E. did not move into any other home until January 12, 2022. Because his principal home was in Pennsylvania for a few

days of 2022, he “maintained [his] principal home” in a state other than Alaska “at any time” between January 1, 2022 and the date of application.

L. E. claims that he had “an abode” in City B prior to the end of 2021.¹⁷ The question in the regulation, however, is the location of his “principal home.” Even if one accepted that L. E. had a “home” in City B before the end of 2021 (this would be a stretch, since all the evidence shows is that, at the very end of the year, a residence was being held for him to use *in the future*), that home certainly was not his “principal” home.

C. *Residency During the Entire Qualifying Year*

To be eligible for a dividend, an individual must be “a state resident *during the entire qualifying year.*”¹⁸ This means that L. E. needed to be a state resident as of 12:01 a.m. on January 1, 2022.

Alaska Statute 01.10.055 provides that to become a state resident, a person must be “physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.”¹⁹ Once residency is established, a person “remains a resident during an absence from the state” unless residency is severed.²⁰ To demonstrate residency, the same law requires a person, among other things, to “maintain[] a principal place of abode in the state for at least 30 days.”²¹

Since the moment of *becoming* a state resident can only happen when a person is physically present, we must focus on the two times L. E. has shown he was physically present in Alaska in 2021—the four-day visits in August and October. In evaluating these periods, we are greatly assisted by the Alaska Supreme Court’s opinion in *Vasquez v. State, Office of Lieutenant Governor*,²² issued on March 1, 2024. That case shows how AS 01.10.055’s physical presence requirement intersects with the “principal place of abode” provision.

¹⁶ *In re M.V.*, OAH Case No. 09-0599-PFD (Dep’t of Revenue 2010), Decision at 3 (Ex. 10 in this case record).

¹⁷ In testimony, he claimed to have had this “abode” from the time of his August visit. However, all he had at the conclusion of that visit—so far as the evidence shows—was a post office box and a spot in the church where his boxes could be kept. Those are not abodes.

¹⁸ Alaska Statute 43.23.005(a)(3) (italics added).

¹⁹ Alaska Statute 01.10.055.

²⁰ AS 01.10.055(c); 43.23.295(7).

²¹ AS 01.10.055(b)(2).

²² No. 7689 (viewable at <https://appellate-records.courts.alaska.gov/CMSPublic/UserControl/OpenOpinionDocument?q=ujbkX9FR3gMc98wp5SwKFzyMNs/JcgJXM9n33hIWpbjNxzdavJf1EA5iNKDF3UQ7%27>).

Vasquez considered, under the same statute that controls residency for PFD purposes, the residency of an individual named Armstrong whose eligibility for public office turned on the exact date she became a resident. Armstrong had come to Alaska for ten days, from May 10 to 20, to visit a person with whom she was developing a romantic relationship. Just before leaving, she and her romantic partner decided she would move in with him in the place he was living. Then, leaving some belongings in his home, she left for a few weeks to wrap up obligations out of state, before returning to live with her partner in Alaska (and ultimately marry him). The Supreme Court held it was not “clearly erroneous” for the trial court to have found, in those circumstances, that Armstrong’s Alaska residency started on May 20. But critical to the Supreme Court’s determination was this fact: that Armstrong (who had no fixed abode anywhere else at the time) established her partner’s home as her “principal place of abode” on May 20—a day when she was present in Alaska—and kept it as such for at least 30 days thereafter.²³ The Court contrasted this with people who “have no abode in Alaska” and “return to their non-Alaska abode” when they leave the state; those people would not be able to prove residency.²⁴

L. E. was in the second category. To become a resident, he had to—while physically present in Alaska—set up a principal abode here and keep that as his principal abode for 30 or more days.²⁵ He could not prove residency under Alaska’s residency statute if, instead, he returned to a principal abode somewhere else. And that is what he did.

IV. Conclusion

Because he did not set up a principal abode in Alaska, while present in the state, until mid-January of 2022, L. E. was not a state resident for the entirety of the qualifying year for the 2023 dividend. And because he maintained a principal abode in another state for the first days of 2022 while not on one of the allowable types of absence, he was separately disqualified from eligibility by that circumstance.

²³ *Id.*, slip op. at 21-22.

²⁴ *Id.*, slip op. at 23.

²⁵ To be clear, under the holding in *Vasquez* a person need only be physically present in Alaska at the inception of the 30-day period. As long as the abode remains their principal abode, they can come and go thereafter. Hence, it was acceptable for Armstrong to travel outside the state to wrap up other commitments, since the Alaska abode, established on May 20 while she was in the state, was her principal abode.

The decision of the Permanent Fund Dividend Division to deny the 2023 Permanent Fund Dividend of L. E. is AFFIRMED.

DATED this 18th day of March, 2024.

By: Signed
Christopher Kennedy
Administrative Law Judge - Tax

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 and Order 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 11th day of April, 2024.

By: Signed
Christopher Kennedy
Administrative Law Judge – Tax

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