

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

In the Matter of)	
)	
T. & W. X., AND MINORS J. & S. X.)	OAH No. 24-0330-PFD
)	
2023 Permanent Fund Dividends)	
_____)	

DECISION

I. INTRODUCTION

The Permanent Fund Dividend Division (“Division”) denied 2023 Permanent Fund Dividends (“PFDs”) for W. and T. X. and their minor children S. and J. because they were absent from the state more days than allowed by statute. The X.s requested both informal and formal appeals. The Division contends those appeals are both untimely and unfounded. As discussed below, the X.s’ formal appeal was untimely. Additionally, the Division correctly determined that the family spent more time out of state than allowed to remain eligible for 2023 PFDs.

II. FACTS

W. and T. X. and their children S. and J have lived in City A, Alaska for several years and own a home there.¹ A severe winter storm triggered a landslide near the X.s’ home on December 2, 2020.² While their house remained standing, they were forced to evacuate and could not safely return. The X.s lived in FEMA-funded housing for several months and then in October 2021 travelled out of state to stay with family.³ Meanwhile, they entered a lease for a house in City A that needed improvements before it could be habitable.⁴ They were eventually able to return to their house, but only briefly to retrieve their belongings, which they keep in storage in City A.⁵

¹ T. X. testimony.

² *Id.*; Ex. 9 at 4; Ex. 10.

³ T. X. testimony; Ex. 1 at 5.

⁴ T. X. testimony; Ex. 7.

⁵ W. X. testimony; T. X. testimony.

In 2022 — the qualifying year for a 2023 PFD — the X.s lived in a rental home in Florida for the first 168 days of the year then returned to City A on June 17.⁶ A couple weeks later they purchased the Florida house they had been renting, regarding it as a second home.⁷ The X.s planned to remain in City A through mid-December.⁸ Those plans were derailed when Ms. X. suffered a medical emergency in September. To seek follow up care, the X.s travelled to Florida on November 5 and remained there through the end of the year.⁹ The X.s thus spent a total of 224 days outside Alaska during 2022: 168 days in the first half of the year and 56 days at the end of the year. Ms. X. began receiving medical treatment on November 10 through the end of the year, for a total of 52 days.¹⁰ That leaves 172 days the X.s were absent for reasons other than medical treatment or caregiving.

The Division denied the X.s' 2023 PFD applications because they were absent from the state during the 2022 qualifying year for more days than allowed by law.¹¹ Specifically, the Division found that the X.s were ineligible under a statutory provision specifying that when claiming a medical treatment or care absence, a person may spend no more than 45 additional days outside Alaska during the qualifying year.¹²

The denial letters provided notice that any informal appeal needed to be postmarked or received by the Division by October 8, 2023.¹³ The X.s requested informal appeals, pointing out that they had planned to be in Alaska the requisite number of days, but those plans were thwarted by a medical emergency and subsequent treatment.¹⁴ These appeals were postmarked October 10 and received by the Division on October 16.¹⁵

The Division again found the X.s ineligible because of their absences from the state, but added two additional bases: that their informal appeals were untimely and that the Florida house they purchased in July 2022 became their principal home.¹⁶ The informal conference denial, issued March 19, 2024, advised the X.s that a formal appeal was due

⁶ Ex. 1 at 5.
⁷ T. X. testimony; Ex. 8.
⁸ Ex. 3 at 3.
⁹ T. X. testimony; Ex. 1 at 5.
¹⁰ Ex. 9 at 13.
¹¹ Ex. 2.
¹² *Id.*; AS 43.23.008(a)(17)(C).
¹³ Ex. 2 at 1, 2, 4, 6.
¹⁴ Ex. 3.
¹⁵ Ex. 3 at 7.
¹⁶ Ex. 5.

within 30 days and included a formal appeal form specifying that the form needed to postmarked or received by the Division by April 18, 2024.¹⁷

The X.s submitted a formal appeal request. Mr. X. signed the request April 30, 2024 and Ms. X. signed it May 7, 2024 — both past the April 18 deadline.¹⁸ They mailed it May 8, 2024 and the Division received it May 14.¹⁹

A hearing was held June 27, 2024.

III. DISCUSSION

The Division contends the X.s are not eligible for 2023 PFDs because they spent too many days outside Alaska and established a principal home out of state during the 2022 qualifying year. The Division further argues that their appeals were untimely. The X.s have the burden of showing the Division is incorrect.²⁰

A. The X.s' Formal Appeal Was Untimely; any Untimeliness of Their Informal Appeal is Waived.

Informal and formal appeals of PFD decisions are due within 30 days.²¹ But if the due date falls on a weekend or holiday, the appeal is not due until the next working day.²²

In its informal conference decision, the Division found the X.s' appeal request untimely because the 30-day appeal deadline was October 8, 2023 but their appeals were not postmarked until October 10. As Mr. X. pointed out at the hearing, though, October 8, 2023 was a Sunday and October 9 was a federal holiday.

The October 8 deadline the Division specified in its denial letters was incorrect. Since the 30th day fell on a Sunday, the X.s' appeal deadline was the next working day. That would be either October 9 or 10, depending on whether October 9 is considered a holiday. "Holiday," as used in PFD regulations, is not a defined term. The word's common meaning in statutes or regulations is an official government holiday. Alaska recognizes nearly all the same holidays as the federal government. One exception is Columbus Day, which in 2023 fell on October 9. In this context, since postmarks are at issue, it would be reasonable to interpret holiday to include holidays observed by the U.S. Postal Service. It would also be reasonable to interpret holiday to

¹⁷ Ex. 5 at 3; Ex. 9 at 1.

¹⁸ Ex. 9 at 1.

¹⁹ Ex. 9 at 1, 16.

²⁰ 15 AAC 05.030(h).

²¹ 15 AAC 05.010(b)(5), (c).

²² 15 AAC 05.010(c).

mean Alaska state holidays since the PFD Division is a state agency. This decision need not determine how to interpret “holiday” here because the Administrative Law Judge may waive an appeal deadline if “strict adherence to the deadline or requirement would work an injustice.”²³ “In general, waivers have been available where the conduct of the division caused confusion that contributed to delay in starting an appeal, and even then the amount of extra time granted has not been unlimited.”²⁴ By listing a Sunday deadline, the Division created some confusion about whether an appeal postmarked the following post service working day would be timely. Under these circumstances, to the extent the informal appeals were untimely, that untimeliness is waived.

The X.s’ formal appeal is a different story. That appeal was due April 18, 2024. The Division notified the X.s that its appeal was due within 30 days and printed the April 18 due date on the appeal form. The X.s’ appeal was not postmarked until May 8, well after the deadline. Indeed the X.s did not sign the appeal form until April 30, 2024 and May 7, 2024. Their formal appeal was thus untimely. There is no evidence that adhering to this deadline creates an injustice here, and thus no basis for waiving the deadline.

On this basis alone, this formal appeal is dismissed and the Division’s informal conference decision stands. This decision nonetheless addresses the other two issues the parties raised on appeal.

B. The X.s Are Ineligible for 2023 Because of Their Absences from the State.

Generally, a person must physically reside in Alaska to be eligible for a PFD. A resident may spend up to 180 days outside the state for any reason and remain eligible for a PFD.²⁵ There are also specific exceptions allowing for longer absences outside the state. These exceptions include receiving continuous medical treatment and providing care to a spouse with a critical life-threatening illness requiring travel outside Alaska for treatment.²⁶ But when a person claims an exception, the 180-day rule no longer applies.²⁷ Instead, when a person claims an allowed absence for medical treatment or care, the person may spend only 45 additional days outside the state during the qualifying year to remain eligible.²⁸

²³ 15 AAC 05.030(k).

²⁴ *In re VD*, OAH 14-0943-PFD at 4 (2014):

²⁵ AS 43.23.008.

²⁶ AS 43.23.008(a)(5)(6).

²⁷ AS 43.23.008(a)(17)(A). This is true for all exceptions except military service. *Id.*

²⁸ AS 43.23.008(a)(17)(C).

The X.s spent 224 days outside Alaska in 2022, which far exceeds the 180 days allowed when not claiming a specific exception.

Assuming the family's circumstances fell within the exceptions for medical treatment and care, the amount of time they spent out of state also makes them ineligible. When Ms. X. had her medical emergency in September and the family traveled to Florida in November for her to seek medical treatment, they had already spent well over 45 days outside Alaska. Thus even if their late 2022 absences qualify as medical absences, their non-medical absences render them ineligible for 2023 PFDs.

The X.s take issue with the policy behind the 45-day rule, arguing that it penalizes Alaskans who exceed the 45 days earlier in the year and then encounter an unexpected medical situation.²⁹ They reached out to the Division in late 2022 to raise concerns with the fairness of the rule, and were advised that those were issues they could raise here on appeal.³⁰ There is no question the X.s have endured multiple hardships in the past several years, being displaced from their home because of a natural disaster and then Ms. X.s medical emergency in late 2022. But the legislature set strict statutory rules on PFD eligibility and absences from the state. The Division is bound by the statute and has no authority to waive these rules, no matter how compelling or unexpected a person's reasons are for being out of state.³¹ The X.s were absent from Alaska more days in 2022 than allowed by law to remain eligible for a 2023 PFD.

C. The X.s Did Not Establish a Principal Home Out of State in 2022.

A person is ineligible for a PFD if they maintain their principal home in another state for any part of the qualifying year.³² The Division contends the Florida home the X.s lived in the first half of the year and purchased in July 2022 was their principal home. The X.s argued the Florida house is a secondary home and that they consider City A their primary home.

This is a unique situation in that the X.s were displaced from their home by the 2020 landslide and have been unable to return except briefly to retrieve belongings. The time

²⁹ Ex. 9 at 5; T. X. testimony.

³⁰ *Id.*

³¹ See *In re E & BH*, OAH 08-0706-PFD (Commissioner Revenue 2009) (couple who vacationed 179 days and then remained out of state an additional 8 days for an unplanned medical emergency could not qualify for PFDs because the total days exceeded 180 days and the non-medical exception days exceeded 45 days).

³² 15 AAC 23.143(d)(1).

they spent in City A during 2022 was in a rental property, whereas their home in Florida was a rental that they then purchased. In that respect the Florida home is certainly more the permanent and stable of the places they stayed during the year. At the hearing, however, the X.s explained that not only do they maintain driver's licenses and voter registration in Alaska, but most of their belongings are in storage in City A. Where one stores belongings is not necessarily definitive. But under these circumstances where the X.s are struggling with the aftermath of a natural disaster, the fact that they continued to keep their belongings in City A and are working to reestablish a more permanent residence there supports finding that their principal home remained in City A throughout 2022. This, however, does not change the fact that the X.s' formal appeal was untimely or that they spent more days out of state than allowed by law to remain eligible.

IV. CONCLUSION

For the reasons discussed above, the X.s' appeal is dismissed as untimely and in any case they are not eligible for 2023 PFDs on the merits. During the 2022 qualifying year, the X.s did not establish a principal home in Florida and nothing in this decision should be construed as a determination that the X.s severed their Alaska residency for purposes of future dividends.

The Division's decisions are affirmed.

Dated: July 1, 2024

By: Signed
Signature
Rebecca Kruse
Name
Administrative Law Judge
Title

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

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 13th day of August, 2024.

By: Signed
Signature
Adam Crum
Name
Commissioner of Revenue
Title

Non-Adoption Options

A. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

- ☐ take additional evidence about _____;
- ☐ make additional findings about _____;
- ☐ conduct the following specific proceedings: _____.

DATED this _____ day of _____, 20__.

By: _____

Signature

Name

Title

B. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows, and adopts the proposed decision as revised:

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 _____ day of _____, 20__.

By: _____

Signature

Name

Title

C. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

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 _____ day of _____, 20__.

By: _____

Signature

Name

Title

D. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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 _____ day of _____, 20__.

By: _____

Signature

Name

Title