

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

In the Matter of	)	
	)	
S. Q. & K. B. T.	)	
	)	OAH No. 24-0350-PFD
<u>2023 Permanent Fund Dividends</u>	)	

**DECISION**

**I. Introduction**

S. and K. T. were found ineligible for the 2023 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, Mr. and Mrs. T. appealed to this tribunal. Their case was heard on July 9, 2024.

Mr. and Mrs. T. are straightforward, honest Alaskans who have made no effort to embellish or revise the history of their qualifying year. Looking at this history analytically, they do not quite fit within the absence rules as the Legislature has framed them. While they retained their Alaska residency and their potential eligibility for future PFDs, they will have to miss out on the 2023 dividend.

**II. Facts**

S. and K. T. came to Alaska 49 years ago. Now in their eighties, they continue to make their principal home in City A. In recent years, their pattern has been to “snowbird” in Arizona for a little less than half the year.<sup>1</sup>

This case turns on how the T.s spent 2022. There are no material facts in dispute.<sup>2</sup> The year proceeded as follows.

The T.s began the year out of state, snowbirding as usual. However, Mr. T. had been diagnosed in late 2021 with life-threatening cancer, and he had an opportunity to receive state-of-the-art treatment in another state, which was unavailable in Alaska. The treatment involved multiple rounds of chemotherapy spanning many weeks with short intervals between rounds, along with various other office visits and two surgeries. This course of treatment began on February 3, 2022. The last active treatment occurred on September 7, 2022, with a follow-up

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<sup>1</sup> Testimony of the Ts.

<sup>2</sup> Factual findings that follow are taken from the Ts’ testimony and Exhibits 2 and 9.

office appointment two months later on November 11. The next treatment round was a short series of maintenance treatments in January 2023.

The treatment went well, Mr. T. was able to (and did) travel by plane when not under treatment. There was no particular reason for the T.s to remain out of state after Mr. T. recuperated from the last round of treatment in September, apart from the fact that the T.s do not spend winters in City A. For the latter reason, the T.s remained in the lower 48 until late March of 2023, returning to City A according to their usual migratory pattern.

The total days outside the state during 2022 was 365. Of that, the span of continuous treatment was 216 days, or perhaps slightly more given the possibility that Mr. T. may not have been ready to travel for a short time after his final treatment round ended. The absolute maximum number of days that could be counted as continuous treatment was 281, ending with the follow-up visit on November 11.<sup>3</sup>

### **III. Discussion**

The qualifying year for the 2023 dividend was 2022.<sup>4</sup> 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.<sup>5</sup> There are two of the allowable absences that potentially apply to Mr. T. and two that potentially apply to Mrs. T.

One of the specifically allowable absences, applicable to both of them, 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.<sup>6</sup> 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 Mr. T. 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

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<sup>3</sup> The Division used the maximum number in evaluating the T.s’ eligibility.

<sup>4</sup> AS 43.23.295(6).

<sup>5</sup> AS 43.23.005(a)(6).

<sup>6</sup> AS 43.23.008(a)(17)(A).

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.” The T.s had between 84 and 149 days of absence that fell outside the period of treatment/convalescence.

The second allowable absence that might apply to Mrs. T. 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 prevents it from working for Mrs. T. 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.

Thus, regardless of the combination of absence provisions that is used, Mr. and Mrs. T. cannot assemble the enough days of allowable absences to cover their full year of absence from the state. This does not mean they did not retain Alaska residency, but it does preclude them from collecting the following year’s PFD.

The T.s are practical people, and they point out that going back and forth to City A is expensive. It would not make sense to fly home for two or three months, outside their normal season for being in Alaska, simply for the purpose of retaining eligibility. The dividend would barely cover the airfare. However, the fact that an absence is sensible and wise does not create an exception under the rigid rules for PFD eligibility.

#### IV. Conclusion

S. and K. T.'s extended absence made them ineligible for the 2023 PFD. They remained Alaska residents, and nothing in this decision precludes them from eligibility for future PFDs.

DATED this 12<sup>th</sup> day of July, 2024.

By: Signed  
Signature  
Christopher Kennedy  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of August, 2024.

By: Signed  
Signature  
Christopher Kennedy  
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.]