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

In the Matter of	)	
	)	
B. & K. E. AND	)	OAH No. 22-0937-PFD
M. & L. E. (MINORS)	)	

DECISION

I. Introduction

B. and K. E. filed timely applications for a 2022 Alaska Permanent Fund Dividend (PFD) for themselves and their two minor children. The PFD Division (Division) denied their applications initially and at the informal appeal level on several grounds, including that Ms. E. accepted full-time, permanent employment and that the E.s maintained a primary home outside Alaska during the 2021 calendar year.

The E.s requested a formal hearing, which was held by telephone on January 9, 2023. The Division's denial is affirmed because the family's absence from Alaska due to Ms. E.'s acceptance of employment with the United States Public Health Service (PHS) in Washington is not an allowable absence for PFD purposes, nor is the family's maintenance of their principal home in Washington.

II. Facts

B. E. is a commissioned officer with the PHS. She works as a pharmacist. In 2014, she was transferred to the Medical Center in City A., Alaska.[1] K. E., who is now Ms. E.'s husband, moved with her and began working for Living Care Service Group. in City A. Mr. and Ms. E. subsequently bought a house in City A. and had two daughters, M.and L.[2]

The E.s remained in City A. until October 2021, when Ms. E. was transferred by the PHS to the City B. Service Unit of the Indian Health Services in City C., Washington.[3] The entire family – Ms. E., Mr. E., and the children - moved to Washington state, where they have been living and leasing a house.[4] They took most of their belongings with them to Washington but left some behind in their City A. house, which they have been renting out to

1 Ex. 2, p. 13.
2 Testimony of B. E. and testimony of K. E.
3 Ex. 2, p. 13.
4 Exs. 3 and 12; Ex. 5; testimony of B. E.

tenants.[5] Mr. E. continued working for the Living Care Service Group remotely, traveling back to City A. occasionally for work until September 2022, when his employment with the Living Care Service Group ended.[6]

Mr. and Ms. E. received PFDs for the 2016 through 2021 dividend years.[7] For the 2022 dividend year, Ms. E. applied online for herself and her daughters, listing her physical address as "Address A., City B., WA 00000."[8] Mr. E. applied online for himself and listed his physical address as the address of their house in City A., although he later clarified that he listed the City A. address only because he was physically present in City A. for work on the day he filled out the application.[9]

During the formal and informal appeal process, the E.s explained that they may purchase a home in City B. at some point but intend to return to Alaska eventually, "after/at retirement from the uniformed services, PHS or if orders take us back to Alaska."[10] They asserted that they are "an active duty U.S. Public Health Service family;" PHS members are subject to being deployed and perform many functions similar to those of members of the armed forces.[11] The claim that "[t]he Alaska PFD Unit has failed to recognize U.S. Public Health Service in Alaska," and "AS 43.23.008(a) has failed to include uniformed services as well as armed forces," arguing it would be discriminatory to find them ineligible for a PFD.[12] They clarified at the hearing that the sole basis for appealing the Division's decision to deny their applications is that their absence from Alaska for Ms. E.'s service with the PHS in Washington is or should be an allowable absence.[13]

III. Discussion

The qualifying year for a 2022 PFD is the 2021 calendar year. The regulations at 15 AAC 23.143(d) list specific actions that disqualify a person from eligibility for a PFD, if

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5 Ex. 3, p. 2; Ex. 8, p. 3; testimony of P. Scott; testimony of B. E.
6 Ex. 3, p. 2.
7 Ex. 1, pp. 5 and 9.
8 Ex. 1, pp. 1-5 and 11-16.
9 Ex. 1, pp. 6-10.
10 Ex. 3, p. 3; Ex. 8, p. 3.
11 Ex. 8, p. 2.
12 Ex. 8, p. 2.
13 Testimony of B. E.

they occur at any time from January 1 of the qualifying year up to the date of application. These actions include things like registering to vote in another state, accepting in-state tuition in another state, or being absent from Alaska for too long without being on an allowable absence. The disqualifiers are bright-line rules that render a person ineligible for that year's dividend.

Another way to become ineligible is to sever ones' Alaska residency, generally by taking steps inconsistent with an intent to make one's home in Alaska for the indefinite future.[14] Once residency has been severed, it must be reestablished from scratch once a person is physically back in the state.[15]

In this case, the Division has taken the position that two disqualifying actions apply to Ms. E. and one to Mr. E. These are the acceptance of full-time, permanent employment in another state (Ms. E.) and maintaining their "principal home" in another state (Mr. and Ms. E.) The Division also suggests generally that the E.s severed their Alaska residency by being "absent under circumstances that are inconsistent with the intent" to remain in the state indefinitely and make a home there. With regarding to the E. children, the Division contends that the children lacked an eligible sponsor because their parents are ineligible; thus, the children are ineligible for a 2022 PFD.

The E.s' eligibility for a 2022 PFD will be discussed below. The qualifying year for a 2022 PFD is the 2021 calendar year.

A. B. E.'s eligibility

15 AAC 143(d)(4) makes clear that a person "is not eligible for a dividend if, 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." This rule applies unless the person was out of state for an allowable reason under AS 43.23.008(a). One of the allowable absences, contained in AS 43.23.008(a)(3), is for persons serving "on active duty as a member of the armed forces of the United States" and for their spouses and dependents accompanying them.

The statute is explicit in using the term "armed forces" rather than the "uniformed services." Indeed, the two terms are not equivalent, as reflected in the definitions of those

14 AS 01.10.055.

15 *See, e.g., In re M.N.*, OAH Case No. 15-1370-PFD (Dep't of Revenue 2016).

terms in Title 10 of the United States Code, which governs the "Armed Forces."[16] "Armed forces" is defined as "the Army, Navy, Air Force, Marine Corps, and Coast Guard." "Uniformed services" is defined as "(A) the armed forces (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service." These definitions make clear that a member of the PHS is not a member of the armed services. Thus, service in the PHS alone is not an allowable absence – a result consistent with multiple prior decisions of the Office of Administrative Hearings (OAH).[17] As a commissioned officer in the PHS, Ms. E. is a member of the uniformed services, but she is not a member of the armed forces. Thus, Ms. E.'s acceptance of employment in Washington during the 2021 calendar year rendered her ineligible for a 2022 PFD under 15 AAC 23.143(d)(4).

The conclusion that the allowable absences in AS 43.23.008(a)(3) do not include absences for employment with the PHS is reflected in the language of Alaska House Bill No. 25, introduced on January 19, 2023. If adopted, the bill would amend AS 43.23.008(a)(3) and expand the scope of allowable absences to include service in the uniformed services – including the PHS – not just the armed forces. But the bill has not yet been adopted, and AS 43.23.008(a)(3) as currently written does not provide an exception for PHS members. Despite the legitimate policy arguments the E.s raise for including uniformed services members in the exception carved out for the armed forces, the Division is required to apply the law as written, which is what it did here. The statute as written compels the conclusion that Ms. E.'s acceptance of out-of-state employment with the PHS disqualified her from eligibility for a 2022 PFD under 15 AAC 23.143(d)(4).

Additionally, 15 AAC 23.143(d)(4) creates a clear 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 for an allowable reason under AS 43.23.008(a). Here, the E.s do not dispute that they were living and maintaining their principal home in Washington state after they moved from Alaska in October 2021,

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[16] 10 U.S.C. § 101.

[17] *See, e.g., In the Matter of T.T., U.T., O.T., and F.T.*, OAH Case No. 22-0269-PFD (Dep't of Revenue 2022); *In the Matter of T. and S.W.*, OAH Case No. 06-0427-PFD (Dep't of Revenue 2006); *In the Matter of T.E*, OAH Case No. 18-1131-PFD (Dep't of Revenue 2019).

and it has already been determined being absent for out-of-state service in the PHS is not a permissible absence under AS 43.23.008(a)(3). Thus, Ms. E.'s maintenance of her principal home in Washington constitutes an additional basis for her ineligibility for a 2022 PFD – another result consistent with prior OAH decisions.[18]

Regarding the Division's argument that Ms. E. severed her residency by being "absent under circumstances that are inconsistent with the intent" to remain in Alaska indefinitely and make a home there, this argument and the facts to support it were not well developed. In any event, it is not necessary to make a determination on this point, as Ms. E. has already been found to be ineligible for a dividend under the automatic disqualifiers in 15 AAC 23.143(d)(1) and (4).

B. K. E.'s eligibility

Like Ms. E., Mr. E. has maintained his principal home outside Alaska since moving out of state in October 2021. The reason for his absence – to accompany his wife while she was serving in the PHS - is not an allowable absence under AS 43.23.008(a)(3). Mr. E.'s maintenance of his principal home outside Alaska for reasons not listed in AS 42.23.0008(a) renders him ineligible for a 2022 PFD under 15 AAC 23.143(d)(1).[19]

C. M. and L. E.'s eligibility

When the application of a child is sponsored by a parent, the parent must be eligible for the same dividend for which the child is applying or ineligible for only narrow reasons not applicable here.[20] Because Mr. and Ms. E. are not eligible for a 2022 PFD, Lucielle and Jessamine are also ineligible.

IV. Conclusion

For the reasons above, the Division's decision to deny the 2022 PFD applications of B., K., M., and L. E. is AFFIRMED.

Dated: January 31, 2023

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18 *See*, e.g., *In the Matter of T. and S.W.*, OAH Case No. 06-0427-PFD (Dep't of Revenue 2006).

19 As with Ms. E., it is also unnecessary to determine whether Mr. E. severed his Alaska residency and is ineligible for a PFD on that basis, as he has already been found to be ineligible under 15 AAC 23.143(d)(1).

20 15 AAC 23.113(b).

SIGNED
Lisa M. Toussaint
Administrative Law Judge

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 24th day of Februrary, 2023.

By: SIGNED
Signature
Lisa M. Toussaint
Name
Administrative Law Judge
Title

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