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

In the Matter of	)	
	)	
Q. T.	)	
	)	OAH No. 23-0198-PFD
2022 Permanent Fund Dividends	)	

DECISION

I. Introduction

Q. T. was found ineligible for the 2022 Permanent Fund Dividend (PFD) because the PFD Division determined she was 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, Ms. T. appealed to this tribunal. Her case was heard by telephone on May 1, 2023, with Ms. T. participating from Town B.

Ms. T. had an excellent, safety-related reason for her extended absence in 2021. Nonetheless, she does not fit within the absence rules as the Legislature has framed them.

II. Facts

Q. T. has been an Alaskan for more than half a century. She has received dividends since the inception of the program, although there have been a few years in which she did not apply or was not eligible.[1] She is now in her seventies. In recent years her pattern has been to spend the winter months at a second home in the western lower 48. She keeps a principal home in Anchorage, has a cabin on the City A., and continues to work in Alaska.

Ms. T. is healthy, but she feels that her winter trips to the lower 48 help to keep her that way by putting her in a location with safer winter footing and with better opportunities for regular exercise in winter. That said, her winter trips to the lower 48 are not for medical treatment. Ms. T. flies herself back and forth in her own plane, and the timing of her trips is dictated in part by the need to make sure she is not flying in dangerous weather.

In 2020, Ms. T. exceeded the 180-day threshold that typically applies to “snowbird”-type absences because of Covid-19 issues that interfered with her travel. However, due to a special act of the Alaska Legislature (SB 241, discussed below), she nonetheless retained eligibility for the next year’s dividend.

This case turns on how Ms. T. spent 2021. There are no material facts in dispute.

Ms. T. began 2021 in Alaska. She then spent four months out of state on "winter vacation." After flying herself back to Alaska, she had two short recreational/family visit trips outside during the summer before flying herself south for another three months in the fall.[2] Her total days outside the state during 2021 were 228.[3]

Despite some early uncertainty on this point, the PFD Division now does not dispute that Ms. T. has at all relevant times maintained her principal home in Alaska and maintained the intent to remain required for Alaska residency.

III. Discussion

Eligibility for the PFD is governed by strict, black-and-white rules.[4] The qualifying year for the 2022 dividend was 2021.[5] 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.[6] There are two of the allowable absences that potentially apply to Ms. T.

One of the specifically allowable absences 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.[7] Since she was absent for more than 180 days, this allowable absence cannot, by itself, save her eligibility for the dividend.

There is also a category of absence for those who travel out of state for health reasons. However, this absence is tightly limited to those "receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician."[8] While valid health concerns do motivate Ms. T.'s travel to a significant degree, she has not been under continuous medical treatment, nor has she been convalescing.

A final note is in order regarding the legislative provision that preserved Ms. T.'s eligibility in 2021, SB 241. SB 241 was emergency legislation rushed through in the closing

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1 Ex. 1, p. 5.
2 Ex. 1, p. 3; hearing testimony.
3 Ex. 1, p. 6.
4 *See, e.g., In re B.S.,* OAH Case No. 22-0748-PFD (Dep't of Revenue 2022) ("The PFD eligibility rules are technical and strict").
5 AS 43.23.295(6).
6 AS 43.23.005(a)(6).
7 AS 43.23.008(a)(17)(A).
8 AS 43.23.008(a)(5).

days of the 2020 legislative session to mitigate the impact of the coming pandemic. Section 16 of the legislation enabled individuals who were absent from the state solely because of conduct in mitigation of Covid-19 to preserve their eligibility in spite of that absence. However, SB 241 provided—in its own text—that Section 16 would be repealed as of no later than November 15, 2020.[9] Thus, it had no applicability in 2021, the qualifying year at issue in this case.

In short, there is no provision of law that covers Ms. T.'s 228-day absence in 2021 and allows her to remain eligible for the following year's PFD. However justifiable and wise her travel choices, they placed her outside the eligibility criteria for the PFD in 2022.

IV. Conclusion

Q. T.'s extended absence makes her ineligible for the 2022 PFD. She remained an Alaska resident, and nothing in this decision precludes her from eligibility for future PFDs.

DATED this 1st day of May, 2023.

By: SIGNED
Christopher Kennedy
Administrative Law Judge

9 FCCS SB 241, Sec. 34.

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 26th day of MAY, 2023.

By: SIGNED
Signature

Christopher Kennedy
Name

Administrative Law Judge
Title

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