

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

In the Matter of	)	
	)	
M. & U. S.S., and S., H., and D. S.S., minors	)	OAH No. 23-0483-PFD
	)	
_____	)	

DECISION

I. Introduction

M. and U. S. are a married couple who were both active-duty members of the United States Army (each holding the rank of Sergeant First Class) when, in August 2021, they relocated to Alaska for duty assignments at Joint Base Elmendorf Richardson (“JBER”). While they took numerous actions consistent with their plans to become long-term Alaska residents, they did not change their state of legal residence as shown in their military Leave and Earning Statements (“LES”) until August 2022. When the S.s later applied for 2023 permanent fund dividends on behalf of themselves and their three minor children, the Permanent Fund Dividend Division (the “Division”) determined they were ineligible since, during part of the 2022 qualifying year, the S.s’ LES showed them as legal residents of other states.

The Division is obligated to follow Department of Revenue regulations, which create a bright-line rule of ineligibility for PFD applicants whose employment records show them as claiming residence in another state at any point during the qualifying year – regardless of any other steps applicants may have taken to establish their Alaska residency. Accordingly, the Division’s determination that the S.s and their children are ineligible to receive dividends in 2023 is affirmed.

II. Facts¹

The S.s both enlisted in the Army in 2003.² While they have lived in many states during their military careers, neither of them changed their state of residency as shown in their LES. Instead, they continued to claim residency in the states where they were living at

¹ The S.s were the only witnesses at the hearing held in this matter. Except as otherwise attributed, the facts described below are based on their testimony.

² Exhibit 2 at pages 1 and 3.

the time of their initial enlistment – Illinois for Mr. S., and New Mexico for Mrs. S. The S.s had little incentive to ever claim residency in a different state since Illinois and New Mexico do not tax the income of active-duty military members.

In August 2021 the S.s moved to Alaska from Missouri for new duty assignments at JBER. Both were approaching 20 years of active-duty service at that time, and they planned to remain in Alaska with their children following their eventual retirement from the military.³ To this end, soon after arriving in Alaska the S.s took numerous actions consistent with their intent to become long-term residents, such as purchasing a home near Palmer, obtaining Alaska driver’s licenses, and registering their vehicles in Alaska.

Shortly after reporting for duty at JBER, the S.s received a briefing from Army personnel who incorrectly advised that they needed to live in Alaska for one year prior to changing the state of legal residence shown on their LES. In reality, the S.s could have made that change as soon as they arrived in Alaska with the intent to make it their permanent home.⁴ Acting on this incorrect advice, the S.s waited a year before submitting requests to have their state of legal residence changed to Alaska in 2022.

Believing in good faith they had done everything needed to establish Alaska residency, in January 2023 the S.s submitted permanent fund dividend (“PFD”) applications on behalf of themselves and their children. At the Division’s request, the S.s later provided copies of their LES for the period ending on December 31, 2021.⁵ Since those showed the S.s as claiming residency in Illinois and New Mexico, respectively, the Division denied their applications. Following an informal appeal where the Division affirmed its decision, the S.s requested a formal hearing that was held on September 6, 2023.

III. Discussion

To establish eligibility for a 2023 dividend, the S.s had to show they satisfied the requirements for Alaska residency during the entire qualifying year of 2022.⁶ Here, the S.s point to numerous actions they took in 2021 that are regarded as evidence of Alaska

³ Mrs. S. subsequently retired from the Army in June 2023; Mr. S. remains on active duty as of the date of this decision.

⁴ The Division maintains a web page detailing the steps military personnel should take to become eligible for receiving a PFD (accessible at <https://pfd.alaska.gov/eligibility/military-eligibility>).

⁵ Exhibit 2 at pages 1 and 3.

⁶ AS 43.23.095(6).

residency under 15 AAC 23.173(g).⁷ However, even if applicants have taken actions that would be sufficient to establish Alaska residency, 15 AAC 23.143(d)(2) provides they are ineligible to receive a PFD if they “claimed or maintained a claim of residency in another state or country in the individual’s employment personnel records” at any point during the qualifying year.

The Alaska Supreme Court has endorsed the use of “some bright line rules” to make it easier to determine PFD eligibility without case-by-case analysis of residency.⁸ This is such a rule, and it mandates absolute ineligibility regardless of any other factors supporting Alaska residency.⁹ Thus, the fact the S.s’ LES showed them as claiming legal residence in other states for part of 2022 absolutely disqualifies them (and their children) from receiving dividends in 2023.¹⁰

An exception to this rule is available in cases where employment records incorrectly show an applicant as claiming residence in another state due to an error or delay on the part of the applicant’s “personnel office.” While the S.s have established they were incorrectly advised by Army personnel that a year had to pass before they could change their state of legal residence to Alaska, this is not an error made by their “personnel office” that would qualify them for this exception.¹¹

This outcome aligns with past decisions that have consistently held that active-duty service members who do not have Alaska listed as their legal state of residence in their LES for the entirety of the qualifying year are ineligible to receive a PFD under 15 AAC 23.143(d)(2).¹² Until such time as the regulation is modified, it must be applied here as it has been applied to others in the past.

⁷ Under this regulation, evidence of home ownership, motor vehicle registrations, and other licensing records can be used to establish “an individual’s intent to remain indefinitely in Alaska.”

⁸ *Church v. State, Dep’t of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999).

⁹ *Thran v. State, Dep’t of Revenue*, 3KO-22-00033 CI, superior court order at p. 3 (2022). A copy of this order is attached with this decision.

¹⁰ Under 15 AAC 23.113(b)(1)(A), a child cannot receive a PFD without a sponsor who is eligible to receive a dividend. Thus, if the S.s are ineligible to receive a PFD in 2023, so are their children.

¹¹ An example of such an “error or delay” is demonstrated by *In re: S.P.S.*, OAH-09-0512-PFD (Dec. 16, 2009) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5446>), where evidence showed that someone in a Navy personnel office had typed “AZ” instead of “AK” when attempting to correct the applicant’s LES.

¹² See *In re: J.C.D.*, OAH 09-0414-PFD (Nov. 23, 2009) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5417>); *In re: J.J.G.S.*, OAH No. 09-0542-PFD (Jan. 20, 2010) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5450>); *In re: B.S.*, OAH No. 22-0748-PFD (October 6, 2022) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=6847>).

IV. Conclusion

Since the S.s did not change their state of legal residence to Alaska on or before January 31, 2021, they and their children are ineligible to receive permanent fund dividends in 2023. It should be noted that the S.s acted in absolute good faith, and that their eligibility for dividends in 2024 is not impacted by this decision.

DATED: September 25, 2023.

Signed

Max Garner

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 20th day of October, 2023.

By: Signed
Max Garner
Administrative Law Judge

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