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

In the Matter of	)	
	)	
M. B. E.	)	OAH No. 23-0048-PFD
	)	
2022 Permanent Fund Dividend	)	

DECISION

I. Introduction

After M. B. E. applied for a 2022 Permanent Fund Dividend (PFD), the Permanent Fund Dividend Division found her ineligible, denying the application initially and at the informal appeal level. Ms. E. requested a formal hearing, which was provided on March 6, 2023.

The denial is upheld because the Division's primary line of analysis is the legally correct one. Ms. E., although she may well have remained a legal resident of Alaska, maintained her principal home outside Alaska in the qualifying year for this dividend under circumstances that disqualify an individual from PFD eligibility for the next year's dividend.

II. Background Facts[1]

Ms. E. became an Alaska resident in 2015.[2] She was eligible for the 2017-20 dividends.[3] She did not apply in 2021, but applied for the dividend again in 2022.

The E. family is comprised of Ms. E., her husband, and four children. In 2020, Ms. E.'s father-in-law in City A. was suffering from health problems. In addition, Ms. E. planned to take pre-medical coursework in that area on a full-time basis.[4] Ms. E.'s husband arranged a temporary job swap with his employer, whereby he could work in City A. Immediately after they arrived, the care needs of the father-in-law increased, and Ms. E.'s focus shifted to caring for him.[5] In order to assist the father-in-law, the family purchased a five-bedroom home in the City A. area that included a bedroom for him to live in. They purchased because there were no

1 Findings are drawn from Ms.E.'s testimony unless otherwise attributed.
2 Ex. 1, p. 4.
3 Ex. 1, p. 6.
4 It is unclear whether any of the coursework would have been taken in person; the college where Ms. E. was enrolled was in City B., Missouri and was too far from City A. for daily commuting.
5 *See* Ex. 4, p. 2.

affordable rentals of that size. They sold their condominium in Alaska.

Ms. E. testified under oath that the family retained the firm intention of returning to Alaska.[6] They kept their drivers licenses and voter registrations in Alaska. And, indeed, as soon as the father-in-law was stabilized they began preparing to move back to Alaska, beginning with a house-hunting trip in November of 2021. They began living in Alaska again in March of 2022, staying in Airbnb's while a house was being built for them, and then moving into that house.

Ms. E. was absent from Alaska for the entirety, or virtually the entirety, of 2021.[7] During that time she was caring for the father-in-law, who was seriously ill with a heart ailment that could have been terminal. She was also taking online classes at the university in City B., Missouri.

III. Discussion

The qualifying year for the 2022 dividend was 2021.[8] 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.[9] There are three of the allowable absences that potentially apply to Ms. E.

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.[10] Since Ms. E. was absent for more than 180 days, this allowable absence is not helpful for her 2022 eligibility.

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6 Because the evidence is limited, I make no finding one way or the other on the question of intent. Eligibility for this dividend is resolved by a narrower issue that does not require such a finding.

7 *See* Ex. 1, p. 3 (claiming no time in Alaska in 2021). However, Ms. E. does seem to have visited the state briefly on a house-hunting trip.

8 AS 43.23.295(6).

9 AS 43.23.005(a)(6).

10 AS 43.23.008(a)(17)(A).

The second potentially applicable provision is an absence "receiving secondary or postsecondary education on a full-time basis."[11] However, a Department regulation and prior decisions make it clear that online classes do not qualify for this absence provision, because one does not have to be absent from Alaska to take online courses.[12] Thus, this provision is inapplicable to Ms. E., who was enrolled only in online classes in 2021.

The third potentially applicable provision is "providing care for the individual's terminally ill family member."[13] The PFD eligibility statutes provide that a father-in-law is a "family member" for this purpose.[14] More uncertain, in this context, is whether the father-in-law was "terminally ill"—his illness may only have been life-threatening, not terminal. We do not have to answer to this question, however, because if Ms. E. relies on this third type of absence, she is ineligible for a separate reason.

In general, a person is disqualified from receiving a PFD if, at any time during the qualifying year and up to the date of application, the person "maintained the individual's principal home in another state."[15] For some types of allowable absences, there is an exception whereby the absent PFD applicant may maintain the person's principal home outside Alaska.[16] This is true, for example, if the principal home was moved outside the state for military service or to serve in Congress.[17] But there is no such exception for individuals who are out of state to care for a terminally ill relative.[18] To retain eligibility, someone engaged in that activity must keep their Alaska home while they are temporarily out of state.

The E. family maintained no home of any kind in Alaska in 2021. Instead, their principal home was the five-bedroom house near City A. This disqualifies Ms. E. from eligibility for the 2022 dividend.

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11 AS 43.23.008(a)(1).

12 *In re J.H.,* OAH Case No. 10-0589-PFD (Dep't of Revenue 2011) (part of the record in this case); 15 AAC 23.163(c)(1) (this category of allowable absence only applies "where participation requires absence from this state").

13 AS 43.23.008(a)(7).

14 AS 43.23.008(f).

15 15 AAC 23.143(d)(1)

16 *Id*.

17 *Id*.

18 *Id*. (not listing AS 43.23.008(a)(7), the absence for terminal illness care, in the exceptions to the principal home rule).

As the Division has acknowledged, being disqualified from the dividend for a given year does not necessarily mean the person lost legal residency in Alaska.[19]

IV. Conclusion

Because she maintained her principal home in another state in 2021 while absent from Alaska for a reason for which PFD eligibility law does not allow the principal home to be out of state, M. B. E. is not eligible for the 2022 PFD. The decision of the Permanent Fund Dividend Division to deny the application of M. E. for a 2022 Permanent Fund Dividend is therefore AFFIRMED.

Ms. E. has not been shown to have lost her Alaska residency. Nothing in this decision precludes her from eligibility for future PFDs in years for which her principal home was in Alaska throughout the qualifying year. Nothing in this decision precludes her from eligibility, in any year, for privileges and services other than the PFD that are reserved for legal residents of Alaska.

DATED this 26th day of April, 2023.

By: **SIGNED**
Christopher Kennedy
Administrative Law Judge

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19 There are myriad Department decisions noting that PFD eligibility and Alaska residency are separate questions. A person can be a legal resident of Alaska and not be eligible for a dividend. *See, e.g., In re K.R.F.*, OAH Case No. 09-0249-PFD (Dep't of Revenue 2009), at 4-5 (published at https://aws.state.ak.us/OAH/Decision/Display?rec=5376).

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 and Order 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 April, 2023.

By: SIGNED
Signature

Chirstopher Kennedy
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.]