

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

In the Matter of	)	
	)	
K. V.	)	OAH No. 23-0081-PFD
	)	
	)	
_____	)	

DECISION

I. Introduction

K. V. seeks prior-year Permanent Fund Dividends (“PFDs”) for 2007, 2010, 2011, and 2015 that she did not receive while living out of state with her mother from 2006 through 2014. The PFD Division denied her applications because she did not satisfy residency and physical presence requirements, nor was her mother eligible to apply for her as a sponsor. On formal appeal, Ms. V. has not met her burden to show that she can meet these requirements. Accordingly, the Division’s decision is affirmed.

II. Facts

K. V. was born in Alaska in 2004 and received 2005 and 2006 PFDs upon applications submitted by her parents.¹

Ms. V.’s mother, E. W., was awarded sole legal and primary physical custody of her on June 25, 2006.² Ms. W. moved out of state with her daughter on October 17, 2006 to accompany Ms. W.’s husband who was transferred by the military.³ Mr. W. has never been eligible to receive a PFD.⁴ Ms. W. applied for 2007 PFDs for herself and her daughter, but both were denied.⁵

Ms. V. continued living out of state with her mother until 2014. She did visit Alaska periodically while living out of state — June 22, 2007 through July 16, 2007, April 5, 2009 through April 17, 2009, June 22, 2010 through June 30, 2010, and August 13, 2013 through August 25, 2013.⁶

¹ Ex. 8 at 1; Division Position Statement at 1-2.

² Ex. 10 at 1.

³ Ex. 7 at 6.

⁴ Ex. 9.

⁵ Ex. 7 at 1; Ex. 8 at 1.

⁶ Ex. 3; Ex. 8 at 2; F. V. testimony.

In March 2014, Ms. V.'s father, J. W., was granted temporary custody and brought his daughter back to Alaska.⁷ Mr. V. is a long-time Alaskan who has received PFDs continuously since 1988, including while serving in the military outside Alaska.⁸

After turning 18, Ms. V. submitted prior year applications for 2008-2015 PFDs.⁹ The applications were denied because of her absences from the state during these years. Ms. V. appealed years 2007 (denied on her mother's application at that time), 2010, 2011, and 2015, arguing that she had an allowable absence and that she maintained residency by visiting Alaska during the qualifying years.¹⁰ The Division denied her informal appeals, finding that Ms. V. was not a resident for the entirety of these years, nor did she have an allowable absence.¹¹

In her formal appeal and at a March 1, 2023 hearing, Ms. V. and her family members argued she should be eligible for 2007, 2010, 2011, and 2015 because she personally wanted to return to Alaska during the years she lived out of state with her mother, because an Alaska court had jurisdiction over her custody for most of this time, and because Ms. V. visited Alaska sufficiently to find that she was present in the state for 72 hours every two years and 30 cumulative days every five years.¹²

III. Discussion

A minor may receive a PFD if they are eligible for the PFD in their own right and are in the lawful and physical custody of a parent who is also eligible and applies on the minor's behalf.¹³ If the parent does not apply for the minor, the minor may later apply for prior-year PFDs upon reaching 18.¹⁴ But the person must still have been eligible for a PFD had an application been filed on their behalf as a child. Thus to receive those prior-year PFDs, a person must both have been eligible for those years and have had a parent or other sponsor who was eligible to file for them.¹⁵ Ms. V. has failed to show that she was eligible for PFDs for 2007,

⁷ Ex. 11 at 1;

⁸ Ex. 6.

⁹ Ex. 8.

¹⁰ Ex. 3. The Division waived the untimeliness of any appeal. See Division Position Statement at 2.

¹¹ Ex. 4.

¹² Ex. 5; arguments by J. and F. V. at hearing.

¹³ 15 AAC 23.113(b)(1)(A) (child eligible if in "lawful and physical custody of an individual who meets the requirements of a sponsor . . . and who is eligible for the dividend or would have been eligible for the dividend had the sponsor filed timely) (emphasis added).

¹⁴ 15 AAC 23.133.

¹⁵ 15 AAC 23.133(b)(3) (may file prior-year applications for minor years "if . . . the individual would have qualified for a dividend had an *eligible* sponsor applied on the individual's behalf during the pertinent dividend year) (emphasis added). People other than a parent can qualify as an eligible sponsor, such as when a child is in state

2010, 2011, or 2015 or that the person with legal and physical custody of her for these years — her mother — was herself eligible.

From at least October 2006 through March 2014, Ms. W. had legal and physical custody of Ms. V. She was thus the sole parent who could have applied for a PFD on her daughter's behalf for these years.¹⁶ But to do so, Ms. W. would have needed to herself be eligible for a PFD.¹⁷ Ms. W. applied for 2007 PFDs for herself and Ms. V., but both were denied because they had moved out of state. Ms. W. remained living out of state and Ms. V. has not provided any evidence to suggest Ms. W. ever had any intent to return or had any basis to remain PFD-eligible during this time. Because she was not herself eligible, Ms. W. could not have been an eligible sponsor. And without an eligible sponsor who could have filed on her behalf, Ms. V. was never eligible for PFDs for these years and does not become eligible for them now merely by becoming an adult.

Even if she did not have an eligible sponsor, Ms. V. has not shown she could meet eligibility requirements herself. A person must be a resident for the entirety of a year to be eligible for a PFD in the following year.¹⁸ Generally, a person must be physically present in Alaska during the qualifying year as well. A person may spend up to 180 days outside the state in a given year, provided that absence is not inconsistent with an intent to remain an Alaska resident.¹⁹ Thus if a person moves and takes up residency in another state on December 31 of a year, the person could not qualify for a PFD because even though they spent only one day outside Alaska, that one day is inconsistent with an intent to remain an Alaska resident. A person who is absent from the state for more than 180 days is not eligible for a PFD for that qualifying year unless they fall into one of several narrow allowable absences, such as for military service or to attend college.²⁰ If one of those allowable absences does apply, a person must continue to spend regular time in Alaska to maintain residency for PFD purposes — 72 hours every two years and 30 days every five years.²¹ These 72-hour and five-year requirements apply only when a person is outside Alaska with an allowable absence.

custody. 15 AAC 23.113(c). But when a child was in physical custody of a parent, as Mr. V. was, the Division looks to the eligibility status of that parent.

¹⁶ 15 AAC 23.113(b)(1).

¹⁷ 15 AAC 23.113(b)(1)(A)

¹⁸ AS 43.23.005(a)(3).

¹⁹ AS 43.23.008(a)(17)(A).

²⁰ AS 43.23.008(a).

²¹ AS 43.23.005(a)(4); AS 43.23.008(d).

With those requirements in mind, Ms. V. was not a resident during the qualifying years of 2006, 2009, 2010, or 2014 for PFDs in 2007, 2010, 2011, or 2015. She resided in Alaska for most of 2006, but then moved out of state with her mother to remain out of state indefinitely. By moving out of state, Ms. V. was not a resident the entirety of 2006. Ms. V. argues she should nonetheless be considered a resident for all of 2006 because she wanted to return to Alaska. Whether Ms. V. had a conscious intent in late 2006, as a two-year-old, to return to Alaska someday is irrelevant because for a minor, the intent to return is derived from the custodial parent.²² Because the evidence does not show Ms. W. had any intent to remain an Alaska resident, Ms. V. necessarily lacked that intent as well. Thus Ms. V. ceased being a resident in October 2006. Because she was not a resident for the entirety of 2006, she is ineligible for a 2007 PFD.

For qualifying year 2014, when Ms. V. moved back to Alaska, she is similarly unable to show she was a resident the entire year. Ms. V. returned in March and therefore was here most of the year. But to be eligible, a person must be a resident the entire year. From January to March, Ms. V. was still living out of state in the custody of her mother, whose intent to remain out of state is imputed to her daughter for those months. Just like 2006 when she moved away, Ms. V. was not an Alaska resident for the entirety of 2014 to be eligible for a 2015 PFD.

For qualifying years 2009 and 2010, Ms. V. lived outside Alaska the entire year and therefore was not a resident. Nor did she satisfy physical presence requirements. Ms. V. was outside Alaska 352 days in 2009 and 356 days in 2010, well in excess of the 180 days a person can be out of state without an allowed absence. And no allowed absence applies here. Ms. V. pointed to her father's and step-father's military service. It is true the child of an active military servicemember can qualify for an allowed absence — but only when the child accompanies that servicemember serving on active duty and only if the servicemember is themselves PFD-eligible.²³ Here, Mr. V. maintained PFD eligibility while serving in the military during this time, but Ms. V. was not in his custody and therefore she could not claim an allowed absence in

²² *In re D.W.*, OAH 22-0794-PFD at 4 (Commissioner of Revenue 2022) (“[a]s the children’s sponsor, [the mother’s] intent is legally considered to be the children’s intent” and therefore mother’s lack of intent to remain in Alaska meant her children lacked intent); *In re JK S & YK*, OAH 18-0504-PFD at 4 (Commissioner of Revenue 2018) (“[W]hen a child is living with his or her parents, the ‘intent to remain’ of the child for purposes of residency is established by the intent of the parents.”); *In re R.E., T.J.E. and J.N.E.*, OAH 06-0385-PFD at 4 (Commissioner of Revenue 2006) (“The intent of a minor . . . when living with her parents, is established by her parents”).

²³ AS 43.23.008(a)(3).

relation to him.²⁴ And her step-father, who was also in the military at this time, has never been eligible for a PFD and therefore Ms. V. could not claim an allowed absence based on his service either. Thus Ms. V. does not qualify for an allowed absence.

Ms. V. pointed to the fact that her custody determination remained under Alaska court jurisdiction until Ms. W. successfully moved to terminate jurisdiction in 2013.²⁵ But courts do not annually assess continuing jurisdiction for custody matters the way the PFD Division assesses a person's residency each year they apply. Superior court jurisdiction for family law matters also follows different requirements than PFD eligibility. The court looks to whether the child or at least one parent physically reside in Alaska.²⁶ Thus when asked to terminate jurisdiction in 2013, the court did so because Ms. W. and Ms. V. were residing in Wisconsin and Mr. V. was residing in Tennessee.²⁷ Yet despite not having the residency necessary for ongoing jurisdiction for his custody matter in Alaska court, Mr. V. satisfied the Alaska residency requirements to continue receiving his own PFDs. Courts and the PFD Division apply different standards in different manners and therefore the fact that the court had not yet terminated jurisdiction here does not meet Ms. V.'s burden to show she is eligible under the separate PFD standards.

Ms. V. further points to her visits to Alaska as satisfying requirements to spend 72 hours in Alaska every two years and 30 days in the state every five years. As discussed above, those requirements are for applicants who are under an allowed absence, such as military service or attending college. They do not apply to someone who has moved out of state.

At the hearing, Mr. V. voiced frustration that his daughter did not receive PFDs in these prior years because her mother neglected to apply. But that is not the situation here. Minors can apply for prior years upon turning 18 when a parent fails to apply for them, as Ms. V. has done. But she must also be eligible for those years. That means satisfying residency and physical presence requirements for herself and demonstrating that the person who could have applied in prior years — her mother — was also eligible. Ms. V. has not met her burden to show eligibility for herself or Ms. W.

²⁴ Ex. 6.

²⁵ Ex. 3.

²⁶ AS 25.30.310.

²⁷ Ex. 12 at 3-4.

IV. Conclusion

Ms. V. is not eligible for 2007, 2010, 2011, and 2015 PFDs. She was living out of state with her mother, who had no intent to remain an Alaska resident, for some or all of the qualifying years. Thus Ms. V. cannot meet the residency requirement, nor can the person who could have filed as a sponsor — her mother — meet her own residency requirement. This alone dooms her applications. In addition, Ms. V. did not meet physical presence requirements for each of these years, nor does she qualify for one of the limited allowable absences. Because Ms. V. did not meet her burden to show she was eligible for these prior-year PFDs, the Division's decision is affirmed.

DATED: March 8, 2023.

SIGNED
Rebecca Kruse
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 4th day of April, 2023.

By: Rebecca Kruse
Signature
Rebecca Kruse
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.]