

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

In the Matter of	)	
	)	
B.-N. T.	)	OAH No. 23-0132-PFD
	)	
<u>2021 Permanent Fund Dividend</u>	)	

DECISION

I. Introduction

B.-N. T.’s timely 2021 Alaska Permanent Fund Dividend (PFD) application was denied by the Permanent Fund Dividend Division (Division) as her 2019/2020 military Leave and Earning Statements (LES) indicated that she resided in Colorado. Ms. T. requested an Informal Appeal, but failed to timely participate, and the original denial was upheld. Ms. T. then requested a formal hearing by correspondence, appealing the Division’s decision not to sustain her informal appeal. The Division contested the formal appeal on two grounds, asserting that her LES indicated she maintained residency outside of Alaska in 2020, and that she did not timely submit requested documentation.

The division’s denial is reversed. Ms. T. affirmatively established that she did not maintain a claim of residency in any other state in 2020, and that Colorado was erroneously listed as her state of residence on her 2019/2020 LES due to an error by military personnel. Additionally, the necessary documentation she provided to verify her eligibility was timely, as it was submitted prior to the formal hearing date. Accordingly, she is to be paid her 2021 PFD.

II. Facts

The facts in this case are undisputed.¹ Ms. T. is a 35-year-old City A. resident who moved to Alaska in January of 2018.² At the time, she was an active member of the State A Army National Guard (WYARNG), and in March 2020 she elected to extend her enlistment through 2026.³ In March 2021 she submitted an online application for the 2020 PFD.⁴ Due to her extended enlistment in the Guard, she responded “yes” to the application

¹ As this was a hearing by correspondence, the facts are taken from the documentary record, including the submissions from Ms. T., and the Division’s Exhibits 1-7.

² Ex. 6.

³ *Id.*

⁴ Ex. 1.

question regarding whether at any time since December 31, 2019 she was on active duty as a member of the U.S. Armed Forces.⁵ She immediately received an electronic auto-response from the Division acknowledging receipt of her application and advising her that additional documents were needed to determine her eligibility due to her affirmative response regarding military service.⁶ She was directed to submit, “as soon as she was able,” 2019 and 2020 active-duty LES.⁷ Contact information for the Division was provided in the event she had questions.⁸ No response was received from Ms. T.

Approximately a year later, in February 2022, the Division sent Ms. T. a letter to her address in City A., notifying her that her application was deficient, as she had still not provided the requisite LES.⁹ She was also informed that if she enlisted/reenlisted or was discharged in 2020 she needed to submit the corresponding documentation, as well as a State of Legal Residence certificate.¹⁰ The letter provided the corresponding military form numbers for each document requested, as well as the name and email of a Division employee to contact for additional help, if needed.¹¹ No response was received from Ms. T.

Also in February 2022, the same information was sent to Ms. T. via email.¹² It included an advisement that she had 30 days from the date of the Division’s request to provide the requested information, or the application could be denied for non-response.¹³ Instructions were included regarding how to submit the requested paperwork.¹⁴ No response was received from Ms. T.

In June 2022, four months later, the Division sent Ms. T. a letter denying her application for a 2021 PFD as she had not provided the requisite paperwork within the allotted 30-day period.¹⁵

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. 3. 15 AAC 23.173(d) authorizes the denial of an application if all the materials requested by the Division for processing are not provided within 30 days of the request absent an approved extension.

Approximately a month later, in July 2022, Ms. T. submitted a request for an informal appeal of the Division’s decision regarding her 2021 PFD, along with the \$25 appeal fee.¹⁶ In response to the question about how she would like to be contacted, Ms. T. marked both “call” and “email.”¹⁷ She signed and dated the form, but in the sections with blanks soliciting responses to, “what is incorrect about the denial letter,” “other relevant facts that should have been considered by the Division,” and “thoroughly explain why the individual is eligible...” nothing was written.¹⁸ Nothing on the appeal form indicated why Ms. T. felt the denial letter was issued in error, nor were the outstanding LES attached.

On November 4, 2022, a Division appeals technician called Ms. T. - one of her preferred ways to be contacted - at the number she listed on her informal appeal request. He was unable to reach her, so he left a message that included his contact information. Ms. T. did not return the call.

On both January 10 and 11, 2023, the technician called her number, left his contact information, and asked that she respond.¹⁹ Ms. T. did not call the technician back until January 18, 2023, at which point her informal appeal had already been denied by the Division for failure to respond in a timely manner to requests for information.²⁰

On February 7, 2023, Ms. T. filed a request for a formal hearing by written correspondence.²¹ On the form she marked that all facts in the informal appeal decision were true, and that there was nothing relevant the Division failed to consider.²² Ms. T. did not offer any reasonable explanation for her exceptional delay in responding to the Division’s requests for additional documentation but attached a 2020 Oath of Reenlistment with the National Guard and the 2019/2020 Leave and Earnings Statements.

On February 23, 2023, the Division sent Ms. T. an email advising her that her appeal could not be resolved based on the information she had submitted due to a discrepancy in the paperwork and would be referred for a formal hearing.²³ While her signed 2018 State of

¹⁶ Ex. 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Ex. 5.

²⁰ Ex. 5. 15 AAC 23.173(d).

²¹ Ex. 6.

²² *Id.*

²³ Ex. 7.

Legal Residence Certificate (military form DD2058) indicated she moved from Colorado to Alaska, her LES still listed her 2019/2020 state of legal residency as Colorado.²⁴

The Division's email advised Ms. T. that the Division could not approve her PFD without a letter (on State A National Guard Letterhead) from her Army National Guard Finance/Personnel Officer explaining why Colorado was listed on her LES as her legal state of residency in 2019/2020.²⁵ Additionally, the Division required submission by the WYARNG of a certified copy of her latest State of Legal Residency Certificate.²⁶

By notice distributed by this tribunal on February 24, 2023, Ms. T. and the Division were given until the date of the hearing by correspondence, March 28, 2023, to submit any additional documents or correspondence for consideration in this formal appeal. The Division filed a position statement and Exhibits 1-7; Ms. T. filed a State of Residence Memo, a 2020 Oath of Reenlistment with the National Guard, 2019/2020 LES and her 2018 State of Legal Residence Certificate. Both were given until April 11, 2023, to submit any responses to the materials submitted by the other party. Nothing was received from either party.

III. Discussion

1. Ms. T. established that she did not maintain a claim of legal residency in another state in her personnel records in 2020

To be eligible for a PFD an applicant must meet various requirements, including being an Alaska resident both on the date of the application as well as during the entire qualifying year.²⁷ Calendar year 2020 was the qualifying year for the 2021 PFD.²⁸ In addition, apart from actual legal residency, a person may not have performed one of a number of disqualifying acts during the qualifying year, one of which is maintaining a claim of legal residency in another state in the person's personnel records.²⁹ To prevail in her appeal Ms. T. must establish by a preponderance of the evidence that she did not perform this disqualifying act in 2020 or that she fits into an exception to it.³⁰

²⁴ Ex. 6, 7.

²⁵ Ex. 7.

²⁶ *Id.*

²⁷ AS 43.23.005(a)(2), (a)(3).

²⁸ AS 43.23.295(6).

²⁹ 15 AAC 23.143(d).

³⁰ 15 AAC 05.030(h), AS 43.23.295(6).

As the Division pointed out, Ms. T.'s 2019/2020 LES listed her state of legal residency as Colorado.³¹ Ms. T. asserted that this was an error on the part of the National Guard. A residency error caused by employment personnel can be cured in multiple ways, including by the submission from the personnel office of a certified copy of her timely request to change the state of legal residence that the personnel office failed to process prior to the qualifying year.³²

On March 27, 2023, the day before the hearing, Ms. T. submitted her 2018 State of Legal Residence Certificate, verifying her relocation from Colorado to Alaska, signed and certified by Sergeant First Class (SFC) S. D. of the WYARNG. With this submission she rectified the error on the 2019/2020 LES and established that she did not fall within the terms of the PFD disqualification for maintaining a claim of legal residency in another state.

Although not required, she also submitted a March 28, 2023 State of Residence Mismatch memo written on Department of the Army, State A Army National Guard letterhead. The memo explained that due to a clerical error within the military, her State of Legal Residence Certificate was not appropriately forwarded to the WYARNG Military Pay Office until April 2020, resulting in "Colorado" continuing to be listed as her state of residency on her 2019/2020 LES. The memo was digitally signed by both SFC S. D. and Supervisory Financial Technician David Vanderpool.

2. *Ms. T. timely provided the relevant requested information for consideration at the formal hearing*

The Division raises a timeliness objection regarding Ms. T.'s appeal, asserting that she was sent an email on February 23, 2023, soliciting the State of Legal Residence Document. The document was not provided within the 30-day deadline set forth under 15 AAC 23.173(d), which tolled on March 25, 2023.

It is true that 15 AAC 23.173(d) provides for denial of a dividend when, as a result of the applicant's failure to provide requested information "for processing" an application, the Division is unable to determine eligibility. However, the purpose of the regulation is to provide for denial of an application in the absence of relevant information, not to penalize the applicant for failing to submit it. It is well established that 15 AAC 23.173(d) does not

³¹ Ex. 6, 7.

³² 15 AAC 23.143(d)(2).

authorize denial of an application when the information requested is submitted by the applicant prior to the conclusion of an appeal.³³

In anticipation of the March 28, 2023, formal hearing by correspondence, Ms. T. submitted her 2018 State of Legal Residence Certificate the military personnel office had neglected to timely process. As 15 AAC 23.173(c) specifically provides that information provided after the time limit “may be considered on subsequent appeal,” this certified state residency certificate will be accepted as curing her deficient 2021 PFD application.³⁴

IV. Conclusion

B.-N. T. has established by a preponderance of the evidence that in 2020 she did not maintain a claim of residency in another state by timely submitting the necessary information to verify her eligibility. Therefore, as 2020 was the qualifying year for the 2021 PFD, the Division’s decision to deny Ms. T.’s formal appeal is reversed.

Dated: May 10, 2023

SIGNED
Danika B. Swanson
Administrative Law Judge

³³ See, e.g., In Re C.M., at 2-3, OAH No. 08-0398-PFD (Commissioner of Revenue 2009). See 15 AAC 23.173(c).

³⁴ 15 AAC 23.143(d)(2)(A).

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 5th day of June, 2023.

By: SIGNED

Signature

Danika B. Swanson

Name

Administrative Law Judge

Title

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