

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

In the Matter of	)	
	)	
K. & J. J., and B. J., a minor	)	OAH No. 23-0570-PFD
	)	
<u>2022 Permanent Fund Dividend</u>	)	
_____	)	

DECISION

I. Introduction

After K. and J. J., along with their minor son, were found ineligible for 2022 Permanent Fund Dividend (“PFD”), they requested a formal hearing to challenge the determination made by the PFD Division (the “Division”). Prior to the hearing the Division reconsidered and reversed its determination as to Mr. J. and his son. This meant the only issue addressed at the hearing held on October 11, 2023, was the denial of Mrs. J.’s application. Since the evidence presented shows that Mrs. J. failed to establish Alaska residency prior to the start of the 2021 qualifying year, the denial of her 2022 PFD is affirmed.

II. Facts

The facts here are not in dispute. While still a young child, Mr. J. moved to Alaska with his parents in 1994.¹ In 2015 he enlisted in the United States Army, and thereafter met his wife, J. J., while stationed in Texas.² After marrying in 2017 the couple made a ten-day visit to Alaska in May 2018 before moving to Mr. J.’s new duty station in Germany.³ While the J.s were living in Germany their son, B., was born in January 2020.⁴ After Mr. J. was reassigned to Military Base A in Washington state, the family made a nine-day visit to Alaska in July 2021.⁵ Mr. J. was honorably discharged with a separation date of January 18, 2023, after which he relocated with his family to Florida (though he hopes to return to Alaska someday).⁶ At no point during the qualifying year of 2021 did Mr. J. and his family physically reside in Alaska.

Mr. J.’s application for a 2022 dividend was initially denied by the Division since he had not spent 30 days in Alaska during the preceding 5 years, a requirement imposed by the legislature in 2013.⁷ Prior to the hearing in this matter, the Division reconsidered its position and

¹ Ex. 5 at p. 3.
² Ex. 5 at p. 3 and p. 7.
³ Ex. 5 at p. 7.
⁴ Ex. 6 at p. 20.
⁵ Ex. 5 at p. 7.
⁶ Ex. 6 at p. 11.
⁷ AS 43.23.008(d).

determined that Mr. J.’s failure to meet the 30-day requirement could be fairly attributed to travel restrictions imposed during the COVID pandemic, and was thus excusable.⁸ With Mr. J. deemed eligible, his son was likewise eligible for a 2022 dividend.⁹ As for Mrs. J., however, the Division stands by its initial determination that she was ineligible since she did not establish Alaska residency prior to the start of the 2021 qualifying year.

III. Discussion

Under AS 43.23.295(7), a “resident” for PFD purposes is someone who is “physically present in the state with the intent to remain indefinitely . . . under the requirements of AS 01.10.055.” This latter statute provides that a person may establish their intent to remain in Alaska by “maintaining a principal place of abode in the state for at least 30 days.”¹⁰ Here, it is undisputed that Mrs. J. was not present in Alaska for more than 9 days in 2021, and that Alaska was never her “principal place of abode.”

The fact Mrs. J. was married to an Alaska resident who was an active-duty military member for the entirety of 2021 does not alter this analysis. While AS 43.23.008(a)(3) provides an allowable absence for spouses and dependents of active-duty military members who are outside of Alaska for more than 180 days during a qualifying year, this provision applies only if the spouse is “otherwise eligible.” This protects the PFD eligibility of Alaska residents who leave the state to accompany a military spouse to a duty station in another state or country. It does not, however, bestow Alaska residency upon a spouse who has never made Alaska their principal place of abode since, under the Division’s regulations, a person “may not become a resident of Alaska while absent from Alaska.”¹¹ Additionally, a separate regulation provides that the allowable absence for military dependents is not available unless the person was a state resident for 180 days prior to initiating the absence.¹²

⁸ The legislature enacted a provision providing that individuals could be excused from satisfying the 30-day visitation requirement if COVID travel restrictions prevented them from doing so. *See* 2020 Alaska Laws Ch. 10 (S.B. 241).

⁹ When the J.s submitted their PFD application, Mrs. J. was identified as B.’s sponsor. Under 15 AAC 23.113(h), however, the Division will accept a substitute sponsor when the original sponsor is deemed ineligible.

¹⁰ AS 01.10.055(b)(1).

¹¹ 15 AAC 23.143.

¹² 15 AAC 23.163(b); *In re E.A.U.*, OAH Case No. 11-0306-PFD (Dep’t of Revenue 2011) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5559>).

IV. Conclusion

While it is undisputed that during the 2021 qualifying year Mrs. J. was married to a service member who was eligible to receive a PFD, she was not eligible to receive a dividend since she did not establish Alaska residency prior to accompanying Mr. J. to his duty stations in Germany and Washington state. Accordingly, the Division's decision denying her 2022 PFD application is affirmed.

DATED: October 31, 2023.

By: Signed
Max D. 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 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 28th day of November, 2023.

By: Signed
Max Garner
Administrative Law Judge

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