

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

In the Matter of	)	
	)	
N. & O. J. AND T. C. J.	)	OAH N O. 21-2153-PFD
	)	
_____	)	

DECISION

I. Introduction

N. and O. J. and their minor son T. are Alaskans living out of state while Mr. J. serves in the United States Air Force. The J.s frequently visit Alaska and planned to do so in summer 2020. That visit would also have maintained their Alaska residency for purposes of Permanent Fund Dividend (“PFD”) eligibility. But the J.s’ plans were derailed by the COVID-19 pandemic and the travel restrictions the military imposed to slow the spread of the virus. The Legislature passed a law to address PFD eligibility for people quarantined out of state during the pandemic. The Department of Revenue Permanent Fund Dividend Division (“Division”), however, determined that this law did not apply to the J.s and denied their 2021 PFDs. The Department of Law submitted supplemental guidance, however, stating that the Division’s interpretation of the law is incorrect. Applying this law here, the J.s have demonstrated they are eligible. Accordingly, the Division’s decisions denying 2021 PFDs for the J.s are reversed.

II. Background

N. and O. J. and their minor son T. established Alaska residency while Mr. J. was stationed here serving in the United States Air Force.¹ They have been living outside the State since 2013 when Mr. J. was transferred to Military Base A in Virginia.²

Generally, a person must physically reside in Alaska to be eligible for a PFD. But certain long-term absences are allowed, including for active military service.³ In 2013, the legislature adopted a requirement that persons who have had an allowed absence from the state for five consecutive years must have spent at least 30 days in Alaska during that time to remain eligible

¹ Ex. 1.

² *Id.*

³ AS 43.23.008(a)(3).

for a PFD.⁴ Thus when the J.s applied for 2021 PFDs, they needed to have spent 30 days in Alaska between January 1, 2016 and December 31, 2020.

The Division determined that the J.s were five days shy of meeting the 30-day requirement. Mr. J. serves in a special public affairs unit that generally restricts leave to two weeks in July and two weeks in December.⁵ The J.s have used these leave periods in past years to return to Alaska to maintain residency and make improvements on a property in City A.⁶ From 2016 through 2019, the Division calculated that the J.s spent 25 days in Alaska.⁷ They planned to travel to Alaska July 6 through 20, 2020, which would have included sufficient time in the state to satisfy the 30-day requirement.⁸

The COVID-19 pandemic derailed the J.s' plans to travel to Alaska in July 2020 or any other time that year. The Department of Defense imposed a stop movement order in March, restricting U.S.-based service members to their local areas.⁹ For Mr. J., this order and its various extensions prohibited him from travelling more than a few miles from his home through the end of 2020.¹⁰

In May 2020, the Alaska Legislature passed SB 241 to extend COVID relief under a number of state laws. For PFD-eligibility, SB 241 amended the uncoded law to state:

Notwithstanding AS 43.23.005(a)(4) and 43.23.008(d), during the novel coronavirus disease (COVID-19) public health disaster emergency declared by the governor on March 11, 2020, as extended by sec. 2 of this Act, an individual otherwise eligible for a permanent fund dividend who has notified the commissioner of revenue or the commissioner's designee that the individual expects to be absent from the state for a continuous period on or after March 11, 2020, remains eligible to receive a permanent fund dividend if the only reason the individual would be ineligible to receive a permanent fund dividend is that the individual was absent from the state because of conduct, including maintaining a voluntary or compulsory quarantine, related to avoiding or preventing the spread of COVID-19.¹¹

Despite this temporary modification to the law, the Division denied the J.s' 2021 PFD, finding that Mr. J. did not satisfy the 30-day rule and therefore was no longer an Alaska

⁴ AS 43.23.008(d).

⁵ Ex. 5 at 4

⁶ *Id.*

⁷ Ex. 3.

⁸ *Id.*

⁹ Ex. 4 at 9-10.

¹⁰ Ex. 5 at 4.

¹¹ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

resident.¹² Because Mr. J. was not eligible for a PFD, the Division found his wife and son ineligible as well.¹³

A hearing was held on November 16, 2021. Mr. J. provided testimony and Peter Scott represented the Division. The record was left open for the Division to submit additional guidance by the Department of Law.

III. Discussion

To be eligible for a 2021 PFD, the J.s need to meet the residency requirements specific to PFDs.¹⁴ The J.s have the burden of showing that the Division incorrectly found that they were not eligible.¹⁵

The issue here is whether the SB 241 language quoted above allows the J.s to be eligible for 2021 PFDs despite not satisfying the 30-day rule.

The Division initially took the position that SB 241 does not apply to a person needing to return to Alaska to satisfy the 30-day rule. That interpretation is at odds with the legislature’s prefatory language that this provision applies “[n]otwithstanding . . . 43.23.008(d) [the 30-day rule].”¹⁶ There is no applicable legislative history for this provision. But examining the language itself, “notwithstanding” generally means that the language that follows will override otherwise contradictory provisions.¹⁷ For this provision in particular, the fact that the legislature expressly cited the potential conflict with 43.23.008(d) indicates an intent for this provision to override that conflict. Otherwise there would have been no need to add the “notwithstanding” language. The “notwithstanding” in SB 241 would thus mean that even though another law requires a cumulative 30 days’ physical presence, SB 241 is providing for PFD eligibility.

It is further evident from the bill as a whole that the legislature passed the law to address impacts of the COVID-19 pandemic on various state laws. Other portions of the bill imposed temporary measures to decrease travel or in-person interactions, including provisions addressing electronic shareholder meetings, telemedicine, and electronic shareholder meetings.¹⁸ If the

¹² Ex. 3.

¹³ *Id.*

¹⁴ AS 43.23.005(a)(3); AS 42.23.008(a)(13).

¹⁵ 15 AAC 23.173(i); 15 AAC 05.030(h).

¹⁶ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

¹⁷ *See, e.g., Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (“As we have noted previously in construing statutes, the use of such a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.”).

¹⁸ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

legislature was concerned about voters, shareholders, and medical patients transmitting the virus, it stands to reason they would have been equally concerned about military servicemembers risking exposure to return to the state simply to fulfill PFD eligibility requirements. The bill also includes provisions to ease administrative burdens on the public during the pandemic, including extending PFD and tax filing deadlines. The provision allowing people quarantining out of the state to be eligible for a PFD similarly eases the burden of maintaining eligibility in the face of unprecedented obstacles.

In a November 30, 2021 supplemental filing, the Department of Law stated that “[n]otwithstanding’ means ‘in spite of.’ With this rule of statutory construction and this definition in mind, §16 of SB 241 suspends the application of AS 43.23.008(d).”¹⁹

In light of the language of the uncodified law and overall purpose of SB 241 and the Department of Law’s interpretation of the language, it is appropriate for the Department to reverse its position that SB 241 is inapplicable to persons needing to satisfy the 30-day rule. Accordingly, under SB241, if a person was absent from Alaska during the COVID-19 public health disaster to prevent the spread of the virus, that absence alone will not bar PFD eligibility, including for people who needed to return to the state to satisfy the 30-day rule.

Applying SB 241 to the J.s, they would need to (1) have been absent from the state to avoid or prevent the spread of COVID-19, including a voluntary or compulsory quarantine; (2) have notified the Department of Revenue Commissioner or designee of the absence; and (3) be eligible for a PFD but for that absence.²⁰ The J.s demonstrated that they were absent from Alaska in 2020 to prevent the spread of COVID-19. Mr. J. was under COVID-related travel restrictions imposed by the military from the onset of the pandemic through the end of 2020. At the hearing, the Division agreed that the J.s had satisfied the notice requirement of SB 241.²¹ And the Division’s bases for denying eligibility all stemmed from the J.s’ absence from the state and failure to satisfy the 30-day rule.²² Because the J.s were absent from Alaska in 2020 to prevent the spread of COVID, they provided the required notice, and they were eligible but for that absence, the J.s should be eligible for 2021 PFDs under SB 241.

IV. Conclusion

¹⁹ Supplemental Submission by the Division.

²⁰ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241).

²¹ Mr. Scott statement at hearing.

²² Ex. 3.

The J.s have met their burden to show they are eligible for 2021 PFDs. Accordingly, the Division's decisions denying those PFDs are reversed.

Dated: January 18, 2022

SIGNED
Rebecca D. 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 11th day of February, 2022.

By: SIGNED

Signature

Rebecca D. Kruse

Name

Administrative Law Judge

Title

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