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

In the Matter of	)	
	)	
K. J. D.	)	OAH No. 20-0689-PFD
	)	

AMENDED DECISION[1]

I. Introduction

This case arises from the Permanent Fund Dividend (PFD) Division's denial of a 2020 PFD dividend to K. D. on the grounds she was no longer eligible due to her changed state residency during the qualifying year. Ms. D. appealed, and a hearing was held by correspondence. This decision finds Ms. D. did change her residency during the qualifying year and was not eligible to receive a PFD.

The denial of her 2020 PFD is Affirmed.

II. Facts

K. D. applied for the 2020 PFD on January 13, 2020.[2] She was not in Alaska the day the application was filed. Her application provided a residence address in State A.[3] She claimed her absence from Alaska began on November 9, 2019 when she moved to a retirement center.[4] She answered "NO" to the question; "Do you intend to return to Alaska to remain indefinitely and make your principal home in the state?"[5] She certified the information in the application was true and correct.[6]

Ms. D. supplemented her application with a letter received by the Division on January 21, 2020.[7] This letter corrected an error regarding her mailing address. In addition, it clarified her intent regarding her Alaska residency. She specifically informed

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This decision has been amended to delete the sentence tbat previously as the last sentence in paragraph 3 on page 3 to address a concern raised by tbe Division in a Proposal for Action.

2 Ex. J.

Id., p. J.

4 *Id.,* p. 3.

Id.,p. 4.

6 *Id.*

7 *leJ.,* pp. 5-6.

the Division that the address in State A was her permanent address. The letter also stated, "I will not return to Alaska," underlining the words "will" and "not" for emphasis.[8]

The PFD Division denied Ms. D.'s application on February 21, 2020.[9]

Ms. D. filed a timely request for informal appea!.[10] Her appeal indicated she originally move to Alaska from State A planning to stay five years. She has a large extended family in the Region A, including children and grandchildren. While in Alaska, she was an active community volunteer with special emphasis helping in the medical fields. However, her own complex medical health made it wise for her to return to State A and better access to her doctors. She, therefore, found housing in a retirement community and moved back to State A on November 9, 2019.[11]

A Division appeal specialist upheld the original denial, ruling Ms. D.'s permanent move from Alaska before the end of the qualifying year severed her Alaska residency. Because Ms. D. was not an Alaska resident for the entirety of the qualifying year, she was not eligible for the PFD.[12]

Ms. D. then filed a request for formal hearing.[13] She requested a hearing by correspondence and provided twelve pages of rebuttal to the Division's reasoning. She essentially argued that because she was in Alaska for more than 340 days of the 2019 calendar year, she did not exceed statutorily allowable absences and should be eligible for the Dividend. She also argued because she was absent to obtain medical treatment, her absence was allowable.[14]

III. Discussion

The person challenging the Division's initial decision has the burden of proof to demonstrate it was made in error.[15] The preponderance of evidence standard applies to this

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Id.

9 Ex. 2.

10 Ex. 3.

II *Id.*

12 Ex. 4.

13 Ex. 6.

14 *Id.*

15 15 AAC 05.030(h).

burden.[16] A preponderance of the evidence means "having more evidence for than against," i.e. the conclusion is "probable."[17]

PFD eligibility requirements are quite stringent. The Division is bound not only by Alaska statutes governing the PFD but also by its own regulations.[18] When the statutes or regulations exclude an individual from eligibility, the Division has no discretion to pay the dividend regardless of the worthiness of the individual, the seeming technicality for exclusion, or the individual's other connections and contributions to Alaska.[19]

Before 2019 Ms. D. was physically present in the state for the required number of days per year and exhibited an intent to remain indefinitely.[20] She thus received a prior PFD.[21] Eligibility is only retained, however, if a person "remains physically present in the state with the intent to remain in the state indefinitely and to make a home in the state" without exceeding the allowable absences.[22]

A person establishes residency by being physically present in Alaska with the intent to remain indefinitely and make a home.[23] If the applicant is not in Alaska at the time the application is filed, they are a resident for PFD purposes only if they are absent for allowable reasons *and* intend to return to the state to remain indefinitely.[24]

In this case, the beginning of the qualifying year was January I, 2019, and the date of application was January 13, 2020. Ms. D. was out of state on January 13, 2020, the date her application was filed. Her application was very clear regarding her intent not to return to Alaska and remain indefinitely. It informed the Division that her move to State A was permanent as of November 9, 2019 and she did not plan to return to Alaska.[25] She also sent a letter to the Division specifically stating: "I <u>will not</u> return to Alaska."[26]

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16 2 AAC 64.290(c).

17 *In the Matter of E.S.,* 586 P.2d 607, 612 (Alaska 1978).

18 *E.g., Church v. State, Dept. of Revenue,* 973 P.2d 1125, 1128 (Alaska, 1999); *Slosh JIM v. Fairbanks North Star Borough,* 12 P.3d 1180, 1185 (Alaska 2000).

19 *In the Matter of D.U.,* OAH No. 13-0812-PFD (Commissioner of Revenue 2013).

20 Ex. **1, p. 7.**

21 Ex. **5.**

22 **AS 0l.10.055(c); AS 43.23.005; AS 43.23.295(7).**

23 *Id.*

24 AS 43.23.295(7).

25 **Ex. 1.**

26 *Id.* at. 5. (Emphasis in original).

Therefore, Ms. D. did not meet basic eligibility criteria under AS 43.23.005 and 15 AAC 23.143(d)(10)(A). She was not eligible for a PFD. The Division did not err.

Ms. D.'s appeal focuses on the reasons for her absence, arguing she remained eligible despite her move because she did not exceed the allowable absences for Alaska residents. A resident must "always [be,] during the qualifying year, physically present in the state or if absent, was absent only as allowed in AS 43.23.008[.]" [27] The amount of time a resident may be out of state and remain eligible for the PFD depends on the reason for the absence.[28] Most Alaska residents rely on the "catch-all" provision in AS 43.23.008(17)(A) as the cap on their allowable absences. That section provides for 180 days of cumulative absence for any reason or combination of reasons *so long as the absences are consistent with an individual's intent to remain a state resident.* However, determining whether a person exceeded the allowable absence is only necessary if the person remained a resident. Because Ms. D.'s permanent move to State A on November 9, 2019 is inconsistent with an intent to remain an Alaskan resident, the catch-all provision does not apply to her.

Ms. D. also argues she was absent from Alaska for qualifying medical reasons and therefore retained her eligibility. This argument is not persuasive. First, a person absent for medical reasons must still intend to return to Alaska as soon as their medical issue is resolved. Ms. D. does not.

Second, allowable medical absences are limited to two circumstances. The first is established when the applicant or qualifying family member is "receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change."[29] The second exists where the applicant is "providing care for a parent, spouse, sibling, child, or stepchild with a critical life threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex."[30]

The records provided by Ms. D. demonstrate she has genuine medical problems. The records do not, however, establish that she is "receiving continuous medical treatment

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27 AS 43.23.005(a)(6).
28 AS 43.23.008(B) and (C)
29 AS 43.23.008(5).
30 AS 43.23.008(6)

recommended by a licensed physician." Ms. D. did not provide documentation from her Alaskan physician recommending that she move or describing the needed continuous care. The records which are provided indicate she needs regular check-ups and screenings and may need future surgery.[31] A need for regular appointments and monitoring is not the equivalent of "continuous medical care."[32]

Taken as a whole, the evidence submitted by Ms. D. demonstrates that she was living in State A where she had established health care providers. She decided to move to Alaska temporarily to be near her children and grandchildren. She relocated in 2018,[33] intending to spend five years.[34] Additional health concerns arose and she returned to State A earlier than anticipated where doctors more familiar with her health were available. She is being monitored for loss of bone density and enlargement of her lymph nodes.[35] The reasons for Ms. D.'s move to return to State A-- where she could be more closely monitored by her doctors and to complete her five-year plan-- while personally valid are not listed as allowable reasons in AS 43.23.008. [36]

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31 Exs. 3 and 6.

32 *In re E.D.,* OAH 17-0786-PFD (Commissioner of Revenue 2017) (Ex. 4).

33 Ex. 5, p. J. Ms. D. did not provide the date she originally moved to Alaska, but it seems fair to infer she applied for the PFD the first year she was eligible.

34 Exs. 3 and 6,

35 ***Id.***

36 The listed reasons primarily involved enrollment in full-time education or fellowship opportunities and **service in the military, a Congressional office, or a State field office.**

IV. Conclusion

Ms. D. moved from Alaska before the date of her 2020 application for reasons other than those permitted by AS 43.23.008. That the move may have been prompted by legitimate health concerns does not change the fact that Ms. D. does not intend to return to Alaska and continue it indefinitely as her home. She is no longer an Alaska state resident for purposes of the PFD. Therefore, the Division's decision to deny her application for a 2020 PFD is Affirmed.

Dated: October 28, 2020

SIGNED
Carmen E. Clark
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 25th day of November, 2020.

By ***SIGNED***
Signature
Michael Barnhill
Name
Deputy Commissioner
Title

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