

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

In the Matter of:)	
)	OAH Case No. 19-0024-PFD
D Q,)	Agency Nos. 2018-021-5128
T Q, and)	2018-021-4353
Z, N, and)	2018-021-5027
D Q (Minors))	2018-021-5044
)	2018-021-5064
<u>2018 Permanent Fund Dividends</u>)	

DECISION

I. Introduction

Captain D Q, his wife T Q, and their three minor children (the “Qs”) applied for the 2018 Permanent Fund Dividends (PFD). The Permanent Fund Dividend Division denied their applications. The Qs requested an informal appeal. The informal appeal was denied. A request for a formal hearing followed. The Qs’ hearing was held on February 8, 2019.

The undisputed evidence shows that Captain Q was not physically present in the State of Alaska for a total of 30 days during the five years preceding 2018. As a result, he is not eligible for the 2018 PFD. The remainder of the family’s eligibility is completely dependent upon Captain Q’s eligibility. Consequently, their applications must be denied as well.

II. Facts

Captain Q is and has been active military at all times relevant to this case. He and his wife have three minor children. The Qs were eligible for and received the 2017 PFD.

The Qs all applied for the 2018 PFD.¹ Ms. Q was the sponsor for the children.² Captain Q’s application provides that he left the State of Alaska in August 2009.³ Ms. Q’s application provides that she left the State of Alaska in October 2012.⁴ It is undisputed that both Captain Q and Ms. Q were physically present in the State for a total of less than 30 days during calendar years 2013 through 2017.⁵

¹ Ex. 1.
² Ex. 1, pp. 9 – 12.
³ Ex. 1, p. 1.
⁴ Ex. 1, p. 4.
⁵ Captain and Ms. Q’s testimony.

Captain Q's and his family's extended absence from the State has been due to his military service, where he has been stationed outside the State. That service has included significant periods of deployment, including an over 9 and one-half month deployment in 2017. Both Captain and Ms. Q grew up in Alaska, their extended families remain in Alaska, and they intend to return to Alaska.⁶

III. Discussion

A. Captain Q

The PFD statutes normally provide that, in addition to other requirements, that applicants must be present in the State of Alaska during the qualifying year, except for excused absences.⁷ It is undisputed that Captain Q was completely absent from the State in 2017, which is the qualifying year for the 2018 PFD. This means that he is not eligible for the PFD unless he fits within an exception. There is an exception available for an applicant who is active duty military, who has to leave the State for that duty.⁸ However, even for someone who is an active duty military member, the PFD statutes provide that an applicant who has been absent from the "State for more than 180 days in each of the five preceding qualifying years" is presumed to no longer be a State resident for PFD eligibility purposes.⁹ It is undisputed that Captain Q was not in the State for more than 180 days in each of the years of 2012 through 2016, the five years that preceded 2017, the qualifying year for the 2018 PFD. As a result, he is presumed to not be an Alaska resident for PFD eligibility purposes.

In order to rebut the presumption of ineligibility, Captain Q must show by clear and convincing evidence not only that he is a State resident, but that he was physically present within the State of Alaska for at "least 30 cumulative days during the past five years."¹⁰ This means that Captain Q must have been physically present in Alaska for a total of 30 days or more in the years of 2013 through 2017. It is undisputed that Captain Q does not meet this requirement. As a result, he is not a "state resident" for PFD purposes, and is not eligible for the 2018 PFD.

⁶ Captain Q's testimony; Ex. 7, pp. 3 – 4; Ex. 13, p. 5.

⁷ AS 43.23.005(a)6).

⁸ AS 43.23.005(a)(3) and (a)(17)(A).

⁹ AS 43.23.008(d).

¹⁰ AS 43.23.008(a)(3) and (d).

B. T Q and Children

To be eligible for a dividend, an individual must be “physically present in the state or, if absent, . . . absent only as allowed in AS 43.23.008” during the qualifying year.¹¹ The qualifying year for the 2018 dividend was 2017.¹² It is undisputed that Ms. Q and children were only present in Alaska in 2017 for a very brief time. The only allowable absence in AS 43.23.008 on which they can potentially rely is the one in AS 43.23.008(a)(3), which preserves eligibility for a spouse or minor dependent who is accompanying “an individual who is (A) serving on active duty as a member of the armed forces of the United States; and (B) eligible for a current year dividend.” As discussed above, Captain Q, while active duty military, is not eligible for the 2018 PFD, which is the “current year dividend.” It therefore follows that Ms. Q and the children are also not eligible for the 2018 PFD.

IV. Conclusion

Although the Qs’ extended absence from the state is entirely attributable to Captain Q’s military service, the statutes that govern PFD eligibility do not provide for any discretion. As a result, Captain Q, Ms. Q, and their three children are not eligible for the 2018 PFD. The Division’s denial of their applications is AFFIRMED.

Dated: April 15, 2019.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹¹ AS 43.23.005(a)(6).

¹² AS 43.23.095(6).

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 9th day of May, 2019.

By: Signed
Signature
Greg Samorajski
Name
Deputy Commissioner
Title

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