

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

IN THE MATTER OF	)	
	)	
R D	)	Case No. OAH 04-0042-PFD
	)	Previous Case No. 040464
<u>2003 Permanent Fund Dividend</u>	)	

**PERMANENT FUND DIVIDEND DECISION & ORDER**

**I. Introduction**

R D timely applied for a 2003 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. D was not eligible, and it denied the application initially and after an informal conference. Mr. D requested a formal hearing by written correspondence. The administrative law judge affirms the division’s decision.<sup>1</sup>

**II. Facts**

Mr. D filed his application from out of state. On the application, he indicated that he left Alaska on November 27, 2002. The reason he gave was, “went to Seattle to go to school & still attending until 8/03.” In his supplemental schedule, Mr. D stated that he was returning to Alaska to remain indefinitely, but for his return date he wrote “unsure.” He also stated that he maintained his principal home in Alaska continuously since December 31, 2001 by living with his parents in Wasilla.

The division sent Mr. D a request for more information. The division asked several questions similar to those on the application, and asked Mr. D to complete an Education Verification Form. Mr. D gave the same answers he gave on his application, again stating that he was unsure when he would be returning to Alaska. Mr. D filled out the student portion of the education verification form, and he also filled out most of the part that is supposed to be completed by the school’s registrar. He sent the form back to the division directly, with the space for the registrar’s signature and seal left blank. The division again sent Mr. D a blank education verification form, and again asked him to send it back completed. Once again, Mr. D sent the form back with the student portion filled out, and this time with just some of the questions for the registrar completed. Again, the form did not contain the registrar’s signature or seal, or any

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<sup>1</sup> The division also noted that Mr. D’ request for a formal hearing was filed more than three months after the 30-day deadline of 15 AAC 05.030(a). Because there has not been a motion to dismiss filed before the deadline contained in 15 AAC 05.030(f), discussion of whether Mr. D is even entitled to a formal hearing is not properly before the administrative law judge.

indication it had been sent to a school. On November 20, 2003 the division denied the application for lack of information.

In his January 8, 2004 request for an informal conference, Mr. D wrote in part,

I am eligible because I was a resident who worked and payed taxes until 11/25/02. I then left Alaska temporarily to go to school in Washington. I filed for my dividend in a timely manner & received 2 – 3 notices that you requested that my school fill out to verify my attendance dates. I never received any notice that I did not qualify because I did not send information to you by 10/31. Since my graduation in 8/03 I have worked in Louisiana, Mexico, Illinois, Iowa and Ohio. I do not think that I received any letters from the dividend office after my graduation.

Mr. D wrote a detailed letter in support of his formal hearing request, part of which reads,

I relocated to Seattle, Washington on November 27, 2002 to go to a school to teach commercial diving. I had every intention of returning to Alaska for employment, but was unable to secure a job in my field. I did interview for a job on a tug boat, (in Alaska) but was not qualified. As a new diver, it is necessary to spend a certain amount of hours “tending” before you become able to “dive.” Alaska did not have a job opportunity for me after my graduation in July, 2003. I secured employment in Louisiana. I had every intention of returning to Alaska, but student loans from Alaska were due and employment was not available.

Mr. D went on to assert that when he departed from Alaska he left his personal belongings in the state at his parents’ house, continued to receive his mail in Alaska, and kept an Alaska driver’s license until August 2003 when a Louisiana police officer advised him he could be fined for not having a local license. Mr. D again stated that “I had to secure employment in Louisiana because there was not employment in Alaska and I needed hours as a Diver-Tender to ‘break out.’ If I could obtain those hours, I could become more employable, especially in the tight job market of Alaska.” Mr. D concluded by stating that he has “once again relocated, and am now receiving mail at my parents’ new residence. Please send all correspondence to this new address.” The address below this statement is in Clayton, Washington.

### **III. Discussion**

In order to qualify for a dividend, a person must have been an Alaska resident through the entire qualifying year, and up to the date of application.<sup>2</sup> The “date of application” is the day the applicant has provided all information required by the PFD Division to make an eligibility determination, including any information the division has requested.<sup>3</sup> Because Mr. D has yet to

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<sup>2</sup> AS 43.23.005(a)(2)-(3).

<sup>3</sup> 15 AAC 23.993(b).

provide an education verification form certified by the school he attended, his application was still not complete when the division denied the application on November 20, 2003.

An Alaska resident who leaves the state remains a resident, so long as the person does not establish residency elsewhere and retains the intent to return to Alaska to remain indefinitely and to make a home in the state.<sup>4</sup> In evaluating the applicant's residency, one of the factors the division must consider is whether the applicant has "taken any other action during or subsequent to the qualifying year that is inconsistent with an intent to remain in Alaska indefinitely."<sup>5</sup> At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.<sup>6</sup>

Mr. D argues that he temporarily left Alaska for the purpose of going to school. A person receiving full-time education is exempt from the eligibility requirement of physical presence in Alaska all through the qualifying year.<sup>7</sup> But even a student must demonstrate continued Alaska residency and the intent to return to the state to make a home in order to still be eligible for a dividend.

The Supreme Court has held that even a subjective intent to return to Alaska will not make a person eligible if the person lacks the actual ability to return to the state.<sup>8</sup> In other contexts, one of the factors the division can consider in determining eligibility is "whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska."<sup>9</sup>

Mr. D left the state to become qualified in a field that he admits presents few opportunities to live in Alaska. When he left the state, it seems clear that Mr. D knew he would need to work somewhere else for a considerable period before he would have any chance of getting a job in Alaska. The period of Mr. D' absence has always been indefinite; he has never been able to say when he planned to come back to Alaska. In the end, it appears that he never did come back to Alaska, but established residency in Washington when his parents also left the state. Under these circumstances, I find that Mr. D did not have the requisite intent of AS 01.10.050 and AS 43.23.095(7) to remain an Alaska resident when he left the state on November 27, 2002.

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<sup>4</sup> AS 01.10.055(c).

<sup>5</sup> 15 AAC 23.143(a)(3).

<sup>6</sup> 15 AAC 05.030(h).

<sup>7</sup> AS 43.23.008(a)(1).

<sup>8</sup> *State, Dep't of Revenue, Permanent Fund Dividend Div. v. Cosio*, 858 P.2d 621, 627 (Alaska 1993).

<sup>9</sup> 15 AAC 23.163(g)(3).

**IV. Conclusion**

Mr. D has not met his burden of proving that the PFD Division’s decision was in error. The decision should be affirmed.

**V. Order**

IT IS HEREBY ORDERED that division of the Permanent Fund Dividend Division to deny the application of R D for a 2003 permanent fund dividend be AFFIRMED.

DATED this 11<sup>th</sup> day of April, 2005.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of R D for a 2003 permanent fund dividend be adopted and entered in his file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 11<sup>th</sup> day of April, 2005

By: *Signed* \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]