

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

IN THE MATTER OF

M.D.

Case No. OAH 05-0027-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

M.D. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. D. was not eligible, and it denied the application initially and at the informal appeal level. Mr. D. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on February 23, 2005. Susan Lutz represented the PFD Division. Mr. D. appeared by telephone. The administrative law judge affirms the division's decision.

**II. Facts**

In his online application for a 2004 dividend, Mr. D. stated that he was in Las Vegas for the purpose of seeking employment and that he did not intend to return to Alaska to remain indefinitely. He listed an address in Las Vegas as both his physical and mailing address. In his request for an informal conference, Mr. D. stated that these answers were mistakes due to his lack of familiarity with the online application form. He stated that he had limited funds and was trying to return to Alaska as soon as possible, but that he was homeless and stranded in Las Vegas.

At the hearing, Mr. D. testified that he left Alaska because he had been told that his father's death was imminent. As it turned out, his father recovered and is fine. Mr. D. testified that he intended to return to Alaska when he left, but he had no money and could not return. He lived with his mother and stepfather for a short time, but Mr. D. did not get along with them and soon moved out. According to his testimony, Mr. D. has been homeless since the time he left Alaska in January 2004. He stayed in Las Vegas for over a year, not living in any particular place, and then he began drifting. At the time of the hearing, Mr. D. was in Muncie, Indiana. He could not say when he might be coming back to Alaska, except that he hoped to return as soon as possible.

### **III. Discussion**

In order to qualify for a PFD, the applicant must be an Alaskan resident.<sup>1</sup> A resident who leaves the state remains a resident, but only for so long as he maintains the intent to return to Alaska to remain indefinitely and to make a home in the state, and only if the absence is under circumstances that are not inconsistent with this intent.<sup>2</sup> At a formal hearing, the person requesting the hearing has the burden of proving that the division's action was in error.

Mr. D. testified that when he left Alaska, his intent was to return, and to this day his intent remains the same. But his return to Alaska is contingent on his finances, which have prevented him from returning from the time he left up to the present. Mr. D. was not able to provide even an estimate of when he might actually return to Alaska. As he points out, he is homeless, and often cannot afford to even eat or find a place to sleep.

It is possible that when he first left Alaska, Mr. D. may have had a genuine plan to get back to the state, though he has not explained what that plan was. But Mr. D.'s application was not complete at the time the division denied it in June of 2004, as he has yet to provide a signed certification page for his online application. By the time the division denied the application, it is unlikely that Mr. D. has a realistic plan to get back to the state. His stay in the Lower 48 had taken on an indefinite quality that not is consistent with continuing Alaska residency. While it may not be his fault that Mr. D. cannot return to Alaska, it cannot be said that a person genuinely intends to return to the state in the foreseeable future when he lacks the means to do so.

While it seems apparent that Mr. D. would like to come back to Alaska, and that he would return if he could, it is equally apparent that he lacks the means to return to the state and is unlikely to be able to afford a return trip any time in the near future. Mr. D. left for an indefinite period of time. His return to Alaska is contingent on events that appear to be beyond his control, and may never come to pass. Under these circumstances, it cannot be said that Mr. D.'s absence from Alaska is consistent with continuing Alaska residency.

<sup>1</sup> AS 43.23.005(a)(2)-(3).

<sup>2</sup> AS 01.10.055; AS 43.23.095(7).

#### **IV. Conclusion**

Mr. D. moved away from Alaska and ceased being an Alaska resident before the date of his application. The PFD Division was correctly following the law when it made the decision to deny his 2004 PFD application.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of M.D. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 26th day of August, 2005.

By: DALE WHITNEY  
Administrative Law Judge

#### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of M.D. for a 2004 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 A A C 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 26th day of August, 2005.

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

By: DALE WHITNEY  
Administrative Law Judge

PFD Division  
8/26/05