

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

IN THE MATTER OF  
S.M.

Case No. OAH 05-0135-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

S.M. timely applied for a 2004 permanent fund dividend on behalf of her minor son, S.M. The Permanent Fund Dividend Division determined that S. was not eligible, and it denied the application initially and at the informal appeal level. Ms. M. requested a formal hearing by written correspondence. The administrative law judge finds that S. is eligible for a 2004 dividend.

**II. Facts**

S. was born in Anchorage in 1988, and is therefore nearly an adult. It appears that at the informal appeal level S. wrote the appeal himself:<sup>1</sup>

Our family home was lived in and maintained by my father, M.M. at Willow Way, Port Alsworth, Alaska. I moved to Flagstaff with my mother temporarily from my remote home to attend high school in the ninth grade. The school in my home town with 80 residents only has 10-20 students K-12, my parents wanted me got have a big school experience in Flagstaff, Arizona.

The move to Arizona was temporary to attend school full time for one year, ninth grade. Attached are football & basketball team participation certificates from the high school I attended which had 1000 students. While attending I was nominated by my teachers to attend a leadership conference of 60 selected students. I returned to my family in Port Alsworth, Alaska to attend 10<sup>th</sup> grade and was then inducted into the National Honor Society. My parents presently still live in our home with me and none of us have any intention to live anywhere else. I have lived in Alaska all my life.

Ms. M. also submitted two written statements alleging similar facts.

The division does not dispute the fact that S.'s absence in 2003, the qualifying year for a 2004 dividend, was less than 180 days in duration, and that he was enrolled as a full-time secondary

<sup>1</sup> Exhibit 3, p. 2. This statement was handwritten on a form in response to several different questions, but is printed here as a single continuous statement. Abbreviations in the original are printed in full.

student during the entire absence. The division alleges, however, that S. was absent from Alaska to live with his mother, not for the purpose of attending school. The division alleges that Ms. M. accepted full-time permanent employment in Arizona, claimed Arizona residency her employment personnel records, filed a 2003 Arizona resident or part-year resident income tax return, and maintained her principal home in Arizona. The division denied Ms. M.'s 2004 PFD application, and Ms. M. did not appeal the denial. She has not responded to the division's allegations in this case.

### **III. Discussion**

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident all through the qualifying year and at the date of application.<sup>2</sup> A person who has established residency in Alaska and then leaves the state remains a resident, so long as the person has the intent to return to Alaska to remain indefinitely and make a home, and so long as the person is not absent under circumstances that inconsistent with Alaska residency.<sup>3</sup> A person is not eligible for a dividend if, during the qualifying year, the person maintained his principal home in another state, unless the person was absent for one of several specific reasons, including receiving secondary education on a full-time basis.<sup>4</sup> It should be noted that, because Shane's absence was less than 180 days, this case does not present legal issues involving allowable absences.

The division alleges a number of facts that, if true, would constitute a strong case that Ms. M. has severed her Alaska residency. The division argues that Ms. M. had not refuted the allegations. For the purposes of this case only, I will assume that Ms. M. did in fact sever her Alaska residency, and that she maintained her principal home in Arizona. The division then argues that

S. was absent from Alaska living with Ms. M., and thereby also maintained his principal home in Arizona. S. also severed his eligibility and Alaska residency for Permanent Fund Dividend purposes.

The paragraph above contains a conclusion that is not necessarily supported. Even if Ms. M. had become a permanent Arizona resident, it must then be determined whether S. also went to live with her as an Arizona resident, or whether he was merely visiting for a limited time before returning home to Alaska. The mere fact that S. was living with his mother in Arizona for a time does not necessarily mean that his mother's home was also S.'s principal home. If Ms.

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

<sup>3</sup> AS 01.10.055(c); AS 43.23.095(7).

<sup>4</sup> 15 AAC 23.143(d)(1).

M. intended to live in Arizona indefinitely and the family's intent was for her to have primary custody with S. returning to Alaska in the summers for visitation with his father, it would have to be said that S. was not an Alaska resident. If the family's intent was for S. to be in Arizona for the limited purpose of attending ninth grade before returning to Alaska to live, S. would remain an Alaska resident with a primary home in Alaska, and he would therefore qualify for a 2004 dividend.

It is possible that when S. left Alaska the family's plans were indefinite, and it could have happened that S. would stay in Arizona with his mother indefinitely, until he became an independent adult. But I find it more likely than not that the intent was for S. to only be absent from Alaska for a limited time to attend school. Several facts support this conclusion.

First is the size and remoteness of Port Alsworth. According to the Department of Commerce, Community and Economic Development, Port Alsworth has 113 residents and only 16 students of all ages in its one school.<sup>5</sup> Access to the community is by a gravel airstrip. The principal economy is a few lodges and four people who hold commercial fishing permits. It is not surprising under these circumstances that parents of a ninth-grader would want some exposure to the outside world and the amenities of a larger school, particularly for a bright student who is interested in sports. S. achieved a near-perfect straight A average at Sinagua High School in Flagstaff, while playing on both the football and basketball teams.<sup>6</sup>

Second is the fact that S. did return to Alaska after ninth grade and continued his education in Port Alsworth. The actual return does not necessarily prove intent to return at the time of the departure, but it is a very strong indicator. The fact that the family appears to have ended up intact in the same home they have lived in for years corroborates the assertion that this is what was planned all along.

Finally, I give substantial weight to S.'s personal statement in the informal appeal. As a minor, S.'s intent is legally derived from his parents. But even at the time he left Alaska for Flagstaff, S. was of an age to participate in important decisions affecting him. In his statement, S. detailed a reasonable, consistent educational plan that he and his parents had worked out and agreed upon. The plan included a year in Arizona, followed by a return to Port Alsworth to live and finish high school. S. presented evidence that he followed the plan, and he demonstrated the achievements that his experience Outside allowed him to reach. S.'s statement is persuasive

<sup>5</sup> <http://www.commerce.state.ak.us/dca/commdb/CIS.cfm> (October 18, 2005).

<sup>6</sup> Exhibit 3, pp.6-9.

evidence that whatever his parents might have had in mind, S. intended to return to Alaska when he finished ninth grade. The evidence suggests that S. enjoyed sufficient support from his parents to accomplish the goals he had set.

**IV. Conclusion**

Considering all the evidence in this case, I find it more likely than not that while absent from Alaska, S. maintained the intent to return to Alaska to remain indefinitely, and that his principal home was in Port Alsworth at all times. There are no other impediments to S.'s eligibility for a 2004 dividend.

**V. Order**

IT IS HEREBY ORDERED that application of S.M. for a 2004 permanent fund dividend be GRANTED.

DATED this 21st day of October, 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 S.M. 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 21st day of October, 2005.

By: DALE WHITNEY  
Administrative Law Judge

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

PFD Division  
10/21/05