

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

IN THE MATTER OF

E.H.

Case No. OAH 05-0266-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

E.H. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. H. was not eligible, and it denied the application initially and at the informal appeal level. Ms. H. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

II. Facts

Ms. H. signed her application on February 15, 2004. She listed her mailing address as an APO box, and provided a physical address in Vicenza, Italy. She provided a daytime telephone number in Italy, and a message phone number in Alaska. Her email address is her name with the extension "[@us.army.mil](mailto:us.army.mil)."

On the application form, Ms. H. disclosed that she had been absent from Alaska for more than 90 days in 2003, but less than 180. The second question on the application asks whether the applicant is in Alaska at the time of filling out the application. Ms. H. answered yes to the question, but on part B of the schedule she also answered yes to the question, "are you currently absent from or living outside of Alaska today?" She stated that she had left Alaska on July 18, 2006, and would be returning to remain indefinitely on May 1, 2006. She stated that she had not maintained her principal home or stored the majority of her household belongings in Alaska continuously since December 31, 2002. She listed her "physical address of home or storage" to be a street address in Italy at a U.S. Army post, and then wrote, "I also store at *** Hub Rd, North Pole AK 99705." The Hub Road address appears to be the address of Ms. H.'s parents.

On December 20, 2004, Ms. H. submitted a change of address form changing her mailing address to the Hub Road address in North Pole, indicating that this was her new physical address as well. With her formal hearing request, Ms. H. submitted a copy of a letter from Alaska Communications Systems, offering her a full-time position in Fairbanks.

III. Discussion

This case is governed by 15 A A C 23.143(d)(1), which provides that an individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has (1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of the time at that home, except while absent for a reason listed

(A) in AS 43.23.008(a)(1) - (3) or (9) - (11), or

(B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph....

The meaning of this law, as it applies to this case, is that Ms. H. is not eligible for a dividend if she has maintained her principal home in another country at any time from the beginning of the qualifying year through the date of application, unless she was allowably absent for one of several specific reasons. Had she been accompanying a spouse who was an eligible Alaska resident and who was absent serving in the military, this rule would not apply to Ms. H. But there is no dispute that Ms. H.'s husband did not apply for a 2004 dividend, and that he is ineligible for that reason. Ms. H. argues that her husband would have been eligible for a 2004 dividend if he had applied. That may be true, but having actually applied is the first of the eligibility criteria for PFDs.' Mr. H. did not apply for a 2004 dividend; he is therefore not eligible. The fact that Ms. H. was accompanying her husband is therefore not relevant in this case.

Ms. H. argues that "I do not think I should be denied just because I was briefly absent for my husband's military purposes. Regardless of who I was with, I remained an Alaska resident." There is substantial evidence in the record to support Ms. H.'s assertion that she has remained an Alaska resident at all times. But with the exceptions noted above that do not apply to this case, the law is clear that even an Alaska resident will be ineligible for a dividend if she maintains her principal home in a foreign country during the qualifying year. Even though she planned to return to Alaska in 2006, and apparently did return to Alaska around March of 2005, I find that the application materials clearly show that at some time during 2003 and at her date of application, Ms. H. was maintaining her principal home in Italy. She is, therefore, ineligible for a 2004 dividend. Ms. H. may disagree that a person in her situation should be denied a dividend, but any different result would first require a change in the law.

IV. Conclusion

Ms. H. maintained her principal home in another state or country at some time from the beginning of the qualifying year through her date of application. She was not absent for a reason listed in AS 43.23.008(a)(1) - (3), (9) - (11) or (13). Because Ms. H. is ineligible for a 2004 dividend under 15 A A C 23.143(d)(1), it is unnecessary to determine whether she remained an Alaska resident at all times.

V. Order

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

DATED this 10th day of November, 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 E.H. 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 day of the date of this decision.

DATED this 10th day of November, 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

Case Parties
11/10/05