

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

IN THE MATTER OF:

A.B.

Case No. O A H 05-0280-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

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

II. Facts

A.B. was a minor child at the time of her application. C.D. is A.'s mother. Ms. D. lives in Boston and has never been an Alaska resident. She visited Alaska once in 2002 for ten days. At that time, A. also came to Alaska and moved in with Ms. G. and her husband, H.G. Mr. and Ms. G. have been Alaska residents since 1968 and 1980, respectively, and they both qualified for 2004 dividends.

A. was born on June 22, 1987; she was fifteen when she came to Alaska. When Ms. D. placed A. with the G.'s she granted them full parental authority over A., including the authority to make decisions regarding her education and medical care. The G.'s enrolled A. in Grace Christian School in Anchorage on August 22, 2002. A. has been a student in good standing at Grace Christian ever since. Ms. D. has paid for A.'s tuition, but the G.'s have otherwise supported her and paid for all of her other expenses. Since moving to Alaska, A. has returned to Boston two times every year to visit her mother, for nine weeks in the summer and two weeks around Christmas.

At the time Ms. G. filed her 2004 application, A. was sixteen, approximately eighteen months away from adulthood. Ms. G. writes that, having lived in Alaska for three years, A.'s personal intent is to remain in Alaska indefinitely.

III. Discussion

According to its position statement,

It is the Division's position that A. is in Alaska primarily to attend school. This is evidenced by the statement made on the letter from her mother submitted with the application (State's Exhibit #1, Page 4) which states that "...We plan on A. continuing her education in Alaska...", and by the fact that A. returns to her mother's home in Massachusetts during the summers and at Christmas.

In addition, A.B. does not appear to be a child in need, and Ms. G., the individual who filed on behalf of Ms. B., does not appear to have had a need to file on behalf of A. C.D. still retains legal custody of Ms. B., still controls Ms. B.'s intent, and has A.'s return to her in Massachusetts every summer and Christmas break. Ms. D. can require that Ms. B. return to her in Massachusetts at any time, and therefore Ms. G. cannot form the intent for A. to remain in Alaska indefinitely and to maintain a home in Alaska. Without that intent, A.B. does not meet the definition of "state resident" as it applies to the Permanent Fund Dividend Program

The appropriate individual to sponsor A. is C.D., Ms. B.'s custodial parent. Ms. D. has never lived in Alaska, and is not eligible to receive the 2004 dividend.

i. A. is an Alaska resident.

A person becomes an Alaska resident by being physically present in the state with the intent to remain indefinitely and to make a home in the state.¹ A. has been physically present in Alaska since the summer of 2002. Like many Alaskan children, A. leaves the state every summer and during the winter holidays for visitation with a noncustodial parent. There is no evidence to contradict Ms. D.'s statement that "my daughter, A.B. has been *permanently* living with my friends S. and H. G. (emphasis added). There is no evidence contradicting Ms. G.'s statement that "we regard her as our daughter and we are in practicality, her parents." Besides being physically present in the state, A. has made her home in Alaska.

The division is correct that minors cannot legally form their own intent; their legal custodians do. The division appears to argue that because Ms. D. could change her mind about her intent to have A. remain in Alaska, and because Ms. B. is not an Alaska resident, Ms. D. cannot form the intent to have A. remain in Alaska. This argument is incorrect. It might be true that Ms. D. could change her mind and recall A. to Boston. But it is also true that any Alaskan adult could change his or her mind about remaining in Alaska, and pack up and leave at any time. The fact that A.'s intent, as determined by her parent, could change is no more relevant than the fact that an adult's intent, as determined by the adult, could

¹ AS 43.23.095(7); AS 01.10.055(a).
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change. At this point, the intent is for A. to remain in Alaska indefinitely. There does not appear to be any intent to recall A. to Boston upon her graduation, or for A. to leave Alaska as soon as she emancipates, facts that would change the outcome of this case.

The division also argues that Ms. D. cannot be a Massachusetts resident and intend for A. to be an Alaska resident. There is no particular reason Ms. D. cannot have a different intent for A. than she has for herself. It is true that the majority of parents intend for their children to live with them in the same state, in the same house. There is no rule requiring Ms. D. to be among the majority. If Ms. D. believes her daughter is better off living permanently in Alaska, that is her personal concern, not the government's. So long as Ms. D. is not trying to claim a dividend for herself, or claiming to be the sponsor who should receive A.'s dividend on her behalf, Ms. D.'s residency is irrelevant.

ii Ms. G. is A.'s appropriate sponsor.

The division argues that A. lacks an eligible sponsor. A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor.² According to 15 A A C 23.113(b)(1),

A child who otherwise qualifies is eligible to receive a dividend if the child is (1) in the lawful and physical custody of a sponsor who is eligible for a dividend or would have been eligible for a dividend had the sponsor filed timely or was only ineligible due to AS 53.23.005(d) and who is

- (A) an adult relative in a full, half, or step relationship, or is a legal guardian;
- (B) an adult sponsor for a child who does not have a qualified sponsor under (A) of this paragraph and the department determines that a need exists for that adult to sponsor the child....

A. is obviously in the lawful and physical custody of the G.'s, and has been since 2002. In applying this regulation, it is important to distinguish lawful and legal custody. Ms. D. may have legal custody of A., but she has ceded physical custody to the G.'s. Unless there is some evidence that the G.'s have kidnapped A. or are holding her without Ms. D.'s consent or in violation of a court order, their custody is perfectly lawful.³

² AS 43.23.005(c).

³ It is also worth noting that the division reaches a potentially incorrect conclusion when it assumes that Ms. D. may exercise complete control over A.'s destiny regardless of the G.'s wishes. The division is not in a position to predict the probable outcome of a hypothetical custody dispute between Ms. D. and the G.'s. See *Kinnard v. Kinnard*, 43 P.2d 150, (Alaska 2002)(psychological not biological parent awarded full custody when in child's best interests). When families are able to agree on what is best for a child without consuming public resources by unnecessarily clogging the court's docket, the division should respect and give effect to the decisions of the family.

The division argues that A. does not appear to be a child in need, and Ms. G., the individual who filed on behalf of Ms. B. does not appear to have had a need to file on behalf of A." A PFD is not a needs-based benefit or a welfare entitlement. The word "need" in 15 A A C 23.113(b)(1) is not used in the sense of "needy" or deprived. There is not a need for Ms. G. to be A.'s sponsor because A. lacks the basic necessities of life. There is a need for Ms. G. to sponsor A. because A. is an eligible Alaska resident in Ms. G.'s custody who lacks an eligible adult sponsor capable of fulfilling the regulation's preference for a blood relative, a step-relative, or a legal guardian. A. needs a sponsor. There is no eligible relative or legally appointed guardian able to fill the role. Ms. G. appears to be a responsible adult acting in A.'s best interests. A.'s legal custodian has authorized Ms. G. to act in loco parentis for A. Nobody has filed a competing application on A.'s behalf. There is no reason why the division should not accept Ms. G. as A.'s sponsor.

IV. Conclusion

A.B. is an Alaskan who meets all the PFD eligibility requirements of AS 43.23.005. As a minor child without an eligible relative or legal guardian, she needs another eligible adult to serve as her sponsor. Ms. G. is an eligible adult who is an authorized representative of A.

V. Order

IT IS HEREBY ORDERED that the application of A.B. for a 2004 permanent fund dividend be GRANTED, with S.G. as her sponsor.

DATED this 18th 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 A.B. for a 2004 permanent fund dividend be adopted and entered in her 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 18th day of November, 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:

Case Parties
11/18/05