

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

IN THE MATTER OF

J.M. and his child B.M.

Case No. OAH 05-0297-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.M. timely applied for 2004 permanent fund dividends for himself and on behalf of his child B.M. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Mr. M.

requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on May 26, 2005. Mr. M. appeared by telephone. Susan Lutz represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

II. Facts

Mr. M. was born in Alaska in 1974 and raised in the state. In 1993 Mr. M. joined the Air Force and left Alaska. Since then, Mr. M. has not been stationed in Alaska, and he does not anticipate a likelihood that he will be stationed in Alaska before he retires. Mr. M. testified that he will retire in approximately another ten years, after serving a twenty-year career in the Air Force, and that he will move back to Alaska in the year 2014. Mr. M. still has family in Alaska, including his parents in Wasilla, a sister in Eagle River and another sister in Anchorage. Mr. M. still has an Alaska driver's license, and he lists Alaska as his state of legal residence in his military personnel records.

In the five years before he submitted his applications, Mr. M. had been back in Alaska three times for a cumulative total of 23 days. For the last five years, Mr. M. has been stationed in Charleston, South Carolina. He is entitled to thirty days of leave per year. Mr. M. does not return more often because of the expense, the difficulty of coordinating leave with his wife's schedule and his children's school schedule, and the fact that he also spends time with members of his wife's family, who do not live in Alaska.

III. Discussion

A person who has been allowably absent for more than five years is, by law, presumably not an Alaska resident anymore.¹ If an applicant attempts to overcome this presumption, the division may rely on the following factors when making a decision²:

- (1) the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence;
- (2) the frequency and duration of return trips to Alaska during the absence; the fact that the individual has returned to Alaska in order to meet the physical presence requirement of AS 43.23.005 (a)(4) is not sufficient in itself to rebut the presumption of ineligibility;
- (3) 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;
- (4) any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's licenses, or receipt of benefits under a claim of residency in another state;
- (5) the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel;
- (6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska; and
- (7) any ties the individual has maintained in Alaska, such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent.

When considering these factors, the division must "give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not."³ In considering what constitutes "frequent" return trips, thirty days in five years serves as a kind of guideline. Unless unavoidable circumstances have prevented return trips, the division must "generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption" that he is no longer an Alaska resident.⁴ The final rule governing this

¹ 15 A A C 23.163(f).

² 15 A A C 23.163(g).

³ 15 A A C 23.163(h)(1).

⁴ 15 A A C 23.163(h)(2).

case is that a person requesting a formal hearing has the burden of proving that the division's decision was in error.⁵

Mr. M. writes,

I believe I am eligible for the dividend because I was born and raised in Alaska for nineteen years, after which I joined the air force and dedicated my life to making a career. The military accepts Alaska as my home of record, the Federal and State government accepts Alaska as my residency, but you are the only one who discriminates against me for not physically living in Alaska because I choose to make a career out of defending my country.

Mr. M. is correct that the PFD laws discriminate in favor of people who physically live in Alaska; indeed, physical presence is one of the basic requirements of eligibility.⁶ But Mr. M.'s view that the law discriminates against those who make a career out of defending their country is not entirely accurate. To the contrary, most people who leave the state for limited times because of their careers lose their eligibility after 180 days, even if they remain Alaska residents at all times. Active duty members of the military are permitted to be absent from the state for much greater periods of time than other people and still retain their eligibility for dividends. But there are limits. At some point, a person's decision to make a life outside of Alaska means that person will no longer be eligible for dividends, even if the person is serving in the military or making some other valuable contribution to the nation.

Mr. M.'s decision to make a career of serving his country is laudable. But it does not alter the fact that for an entire decade, Mr. M. has not lived in Alaska. He does intend to return to Alaska for another decade. Mr. M. does not get back to Alaska much anymore, and the reason is not entirely due to his service in the Air Force. Mr. M. has cultivated a life outside Alaska, and his commitments to his children, his wife, and his wife's family come first. This is not to say there is anything at all blameworthy about Mr. M. devoting the greater part of his free time to his immediate family; quite the contrary. But a person in Mr. M.'s situation is not eligible for continuing dividends.

I have considered the seven factors listed in 15 A A C 23.163(g). Mr. M. was a credible witness, and his testimony merits serious consideration. I give particular weight to the fact that he is from Alaska and was raised in this state, and that many of his relatives still live in Alaska. But regardless of the reasons for his move out of the state, I find a twenty-year absence from Alaska with infrequent returns to be too much to overlook. Under the circumstances of this case, I find that

⁵ 15 A A C 05.030(h).

⁶ AS 43.23.005(a)(6).

Mr. m. has not overcome the presumption that he is no longer an Alaska resident, and that he has not met his burden of proving that the division's decision was in error.

IV. Conclusion

Mr. M. is no longer an Alaska resident for purposes of determining PFD eligibility. B. is no longer an Alaska resident for the same reasons. The division was correctly applying the law when it made the decision to deny the applications in this case, and its decision should be affirmed.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of J.M. and B.M. for 2004 permanent fund dividends be AFFIRMED.

DATED this 17th 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 J.M. and B.M. for 2004 permanent fund dividends be adopted and entered in their 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 17th day of November, 2005

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

Case Parties
11/17/05

By: DALE WHITNEY
Administrative Law Judge