

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

IN THE MATTER OF:

E.M.

Case No. OAH 05-0301-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

E.M. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. M. 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 affirms the division's decision.

**II. Facts**

Ms. M. has been a resident of Kodiak all her life, having left only to attend college. On July 26, 2003, Ms. M. married A.M., an active-duty member of the Coast Guard. On August 26, 2003, the M.'s moved to Elizabeth City, North Carolina, pursuant to Mr. M.'s orders. The M.'s plan to move back to Alaska in 2007.

Mr. M. has never applied for a permanent fund dividend. During the first part of 2003, Mr. M. had another state listed in his military leave and earnings statement (LES) as his state of legal residence. Mr. M. changed his LES to reflect Alaska as his state of legal residence when he got married in 2003.

**III. Discussion**

According to 15 A A C 23.143(d),

An individual is not eligible for a dividend if, 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 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....

This regulation does allow a person to maintain her principal home in another state during the qualifying year if she is accompanying an eligible spouse who is absent from Alaska on active duty in the armed forces.

Ms. M. does not dispute that she maintained her principal home in another state for the last four months of 2003. She writes,

We have maintained our principal home in North Carolina from September, 2003, to present—only due to the fact of getting orders from the US Coast Guard to work there. This fact should not affect my filing status. Military families have the right to declare residency wherever they wish.

Ms. M. argues that she was accompanying an eligible spouse, and that she may therefore maintain her principal home in another state and still qualify.

Ms. M. is incorrect in her assertion that Mr. M. is eligible for a 2004 dividend. Mr. M. did not apply for a 2004 dividend. There are a number of eligibility criteria, such as state residency, that a person must meet in order to qualify for a dividend.<sup>1</sup> The first of these is that a person must apply for a dividend.<sup>2</sup> A person who has not applied for a dividend during the application period is not eligible for a dividend. Even if Mr. M. had applied, he would not be eligible because he maintained another state as his state of legal residence in his personnel records at some time during 2003. The law specifically states that this fact alone would disqualify Mr. M. for a 2004 dividend.<sup>3</sup> Ms. M. is correct that "military families have the right to declare residency wherever they wish." But those who choose to declare residency in a state other than Alaska do not qualify for permanent fund dividends.

Because Mr. M. is not eligible for a 2004 dividend, Ms. M.'s accompaniment of him while he was serving in the armed forces does not excuse her from the rule that renders a person ineligible when she maintains her principal home in another state during part of the qualifying year.

#### **IV. Conclusion**

Regardless of whether she is still an Alaska resident, Ms. M. maintained her principal home in another state at some time during the qualifying year. She was not absent for one of the reasons listed in AS 43.23.008(a)(1) - (3), (9) - (11) or (13). Ms. M. is, therefore, not eligible for a 2004 permanent fund dividend. The division was correctly following the law when it made the decision to deny Ms. M.'s application.

<sup>1</sup> AS 43.23.005(a).

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

<sup>3</sup> 15 AAC 23.143(d)(2).

**V. Order**

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

DATED this 28th 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.M. 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 28th 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  
11/28/05