

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

IN THE MATTER OF

C.M. and her children D.S. and K.L.M.

Case No. OAH 06-0390-PFD

2005 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

C.M. timely applied for 2005 permanent fund dividends for herself and on behalf of her minor children K.L.M. and D.S. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Ms. M. requested a formal hearing by written correspondence only. Upon review of the file and due deliberation, Administrative Law Judge Dale Whitney finds the applicants to be eligible 2005 dividends.

II. Facts

In 2002, Ms. M. had lived in Alaska for eighteen years, and both D. and K.L. had been born and raised in Alaska. On December 22, 2002, on their way to a family gathering Christmas gathering, Ms. M.'s sister and her niece were killed in a tragic head-on collision in Florida, and her eight-year-old nephew J. severely injured and disabled. Sometime during the summer of 2003 Ms. M., along with K.L. and D., went to Florida for a prolonged stay with Ms. M.'s surviving family. In Florida, Ms. M. helped her mother care for J. and provided support for the grief-stricken family members, particularly during the period when the driver of the other car, who had been driving drunk in the wrong direction on Interstate 4, came to trial. The trip also afforded K.L. and D. the opportunity to become acquainted with their family members, some of whom they had never met.

On the application and in an accompanying explanatory letter Ms. M. stated that she and the children had been absent from Alaska from August 1, 2003, until July 5, 2004.¹ Because Ms. M. did not file a 2004 dividend application, the division sent her a request for further information, including a request to complete "2005 Prior Year Non-Filer" forms for herself and the

¹ Exhibit 1, p. 9.

children. Ms. M. returned the forms, indicating that she left Alaska on July 3, 2003, and returned to Alaska on June 4, 2004, with the notation "not sure" written under the return date.

The division determined that Ms. M. and the children returned to Alaska on July 5, 2004, as Ms. M. originally stated on the applications, and that the applicants had been absent from Alaska for 187 days in 2004. The division therefore denied the applications because of an unallowable absence during the qualifying year. In her formal hearing request, Ms. M. stated that she and the children returned to Alaska on June 6, 2004, but that she could not find proof of the return date. She stated that on the applications she had "messed up the dates," but she seems to have some lingering uncertainty about the return dates, stating "I think the dates are right." Most of Ms. M.'s lengthy written comments discuss the family's tragic loss and their other circumstances.

With her request for a formal hearing, Ms. M. provided a small US Airways boarding pass stub for K.L. On the front of the pass Ms. M. wrote, "This is all I can" followed by "find on our flight home" written on the back. The front of the pass shows that K.L. flew from Fort Meyers 8:50 a.m. The pass also shows the date of the flight. The date is nearly impossible to read, having been obliterated by a date stamp. Covering the entire space for the date in fine print are the inked words, "ALASKA DEPT OF REVENUE, PFD DIVISION, DIVIDEND APPEALS." Careful study of the original copy of this document, however, reveals that the date of the flight was June 6. No year is indicated.⁴

While the family was absent, Ms. M. stored her belongings with a friend in North Pole. Upon her return, Ms. M. worked as a waitress at ***** in Fairbanks, and was looking for a second job in Fairbanks to make ends meet.⁵

III. Discussion

The issues in this case are factual. There is no dispute that if the applicants were absent for more than 180 days in 2004, they will be ineligible for 2005 dividends because of the allowable absence provisions of AS 43.23.005(a)(6) and AS 43.23.008(a)(14). The division also asserts that the applicants are ineligible because they maintained their principal home in Florida during their

² Exhibit 2, page 4, 9.

³ Exhibit 6, page 5.

This document suggests a need for the division to review the manner in which evidence is handled. If it had not been possible to read the date on this critical piece of evidence, it may have been necessary to rule against the division because of the destruction of evidence.

³ Exhibit 4, page 3.

absence, and because Ms. M. obtained full-time permanent employment, which would disqualify Ms. M. under 15 A A C 23.143(d)(1) and (4), respectively.

K.L.'s boarding pass is only for one of the three applicants, and it shows only one leg of a return journey from Florida to Alaska. It does conclusively prove, however, that K.L. was on a flight out of Florida to somewhere on June 6 of some year. Collectively, the evidence in the file suggests a likelihood that the applicants are not people who frequently jet around the nation. The evidence also suggests a likelihood that K.L. who would have been eight years old in June of 2004, would not have been flying without being accompanied by her mom and older brother. While the evidence is not conclusive, it is more likely than not that the boarding pass in Exhibit 6, page 11 was for the first leg of a flight from Florida to Alaska that the applicants all took together on June 6, 2004. Because the applicants returned to Alaska on June 6 of the qualifying year and not July 5 as the division found, they were not absent for more than 180 days during the qualifying year. If their absence was not inconsistent with the intent to make their home in Alaska, the applicants should qualify for 2005 dividends.

The division asserts that Ms. M. maintained her principal home in Florida and accepted permanent full time employment there, based on boxes she checked on her supplemental schedule.⁶ In her formal hearing request, Ms. M. wrote,

I did not maintained a Home in Flo. Yes I lived with my parents and Had to get a Job to save money to come Home. My job was part time. And \$2.15 hr maybe 15-20 hrs a week. And we were home June 6 2004. (I worked at the Sunflower Cafe in Fort Meyers Fl. From Oct 03 to May 04) I think the dates are right. The job was not permenet.

Ms. M.'s principal source of income appears to be employment as a waitress. There is no evidence to contradict her assertion that she only worked in Florida on a temporary basis before returning to Alaska. Although she kept her belongings in storage and stayed with her parents while in Florida, the circumstances prompting the trip and her ultimate return to Alaska indicate that Ms. M.'s principal home was properly regarded as being in Fairbanks during the entire period of her absence. By indicating otherwise on her supplemental schedule, it appears that Ms. M. was merely doing her best to be honest and disclose all information to the division.

IV. Conclusion

The applicants were absent from Alaska for less than 180 days during the qualifying year. Ms. M. did not maintain her principal home or obtain permanent full-time employment in another state during her absence. The applicants are eligible for 2005 dividends.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of C.M., K.L.M., and D.S. for 2005 permanent fund dividends be GRANTED.

DATED this 24th day of January, 2007.

By: DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 21st day of February, 2007.

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
2/21/07