

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

IN THE MATTER OF)
)
 T. AND S. W.)
) OAH No. 06-0427-PFD
2006 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

T. L. and S. T. W. timely applied for a 2006 permanent fund dividend (PFD). T. W. is a Public Health Service officer, and the W.s applied from Colorado, where they are temporarily stationed. The Permanent Fund Dividend Division denied the applications initially and at the informal appeal level, primarily on the basis of that the W.s maintained their principal home in another state while absent for an unallowable reason. At the W.s' request, a formal hearing was held by telephone on July 26, 2006. The division's denial is affirmed because, although the W.s continue to maintain Alaska residency, their absence disqualifies them from the dividend for duration of their posting in Colorado.

II. Facts

The W.s are longtime Alaska residents. They own a home here, and except as required by their occupations they have maintained many other ties to the state. At all relevant times their plan has been to remain Alaskans indefinitely.

T. W. is a commissioned officer in the United States Public Health Service (PHS).¹ She received orders to take up a two-year hardship posting in Navajo country in Colorado beginning on August 27, 2005.² The W.s both moved to Colorado, keeping their house in Anchorage and renting quarters in Colorado. Mr. W. accepted a non-PHS job in Colorado. The W.s filed full-year nonresident tax returns in Colorado for 2005.³ They remained in Colorado at the time of the hearing. They expect to return to Alaska on August 27, 2007.

¹ Exhibit B (commission); Exhibit E (Appointment and Call to Active Duty).

² Exhibit 7, p. 9 (Personnel Order); hearing testimony.

³ Exhibit A. Owing to a misunderstanding of Colorado law, one of the W.s initially filed as a part-year resident, but the return was subsequently amended.

III. Discussion

It is not disputed that the W.s are maintaining their principal home in Colorado. It is possible to receive a PFD while retaining one's principal home in another state or country, but only while absent for certain reasons listed in Alaska Statute 43.23.008.⁴ One of the permissible reasons to maintain a principal home in another state or country is AS 43.23.008(a)(3): while serving in, or accompanying as spouse or dependent someone serving in, "the armed forces of the United States." It is this provision that the W.s rely on in claiming a 2006 dividend. The W.s note that the PHS is one of seven "uniformed services" of the United States.

The W.s are mistaken in their belief that "uniformed services" are equivalent to "armed forces." Title 10 of the United States Code, which governs the "Armed Forces," defines both terms. The title's general definitional section⁵ defines "armed forces" to mean "the Army, Navy, Air Force, Marine Corps, and Coast Guard." Immediately afterward, it defines "uniformed services" to mean "(A) the armed forces; (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service."

The Alaska Statute is explicit in using the term "armed forces" rather than "uniformed services." The Department of Revenue is therefore not free to treat PHS service as an allowable absence. Since the W.s were not members of the armed forces, and no other basis has been offered to make their absence an allowable one, their maintenance of a principal home in Colorado makes them ineligible to receive a dividend.⁶

IV. Conclusion

Because the W.s maintained their principal home in another state for part of 2005 to serve in the Public Health Service, and PHS service is not an allowable reason to do so under the PFD program, they are not eligible for a 2006 permanent fund dividend.

⁴ See 15 AAC 23.143(d)(1).

⁵ 10 U.S.C. § 101.

⁶ The W.s are probably ineligible for 2007 and 2008 dividends for the same reason that applied to the 2006 dividend. However, the maintenance of a principal home in another state is not wholly equivalent to establishing residency there. The W.s appear to be maintaining Alaska residency during their absence consistent with AS 01.10.055. This decision should not be construed as a determination that they are not Alaska residents; it determines only their PFD eligibility.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of T. L. W. and S. T. W. for a 2006 permanent fund dividend is AFFIRMED.

DATED this 14th day of September, 2006.

By: Signed
Christopher Kennedy
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 after the date of this decision.

DATED this 12th day of October, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]