

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

IN THE MATTER OF

L.S. and her minor child
J.S.

Case No. OAH 06-0772-PFD

2005 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

L.S. timely applied for a 2005 permanent fund dividend for herself and on behalf of her minor child J.S. The Permanent Fund Dividend Division initially granted the applications and paid the dividends, but later determined that the applicants were not eligible. The division then denied the applications and assessed the dividends, affirming its decision at the informal conference level. Ms. S. requested a formal hearing by written correspondence only. Because Ms. S. and J. were not Alaska residents when they applied for 2005 dividends, the division was correct to deny the applications and assess the dividends.

II. Facts

Ms. S. and J. lived in Alaska through most of 2004. Ms. S.'s mother fell ill late in 2004, and Ms. S. went to Oklahoma to take care of her on December 22, 2004. Before she left, Ms. S. put all of her belongings in storage and arranged for the military to pick them up and ship them to Albuquerque, New Mexico. Ms. S. forwarded her mail to Oklahoma. By some time in February, 2005, Ms. S. knew that she would not be returning to Alaska any time in the immediately foreseeable future.¹ On March 12, 2005, Ms. S.'s mother passed away. On March 21, 2005, Ms. S. signed the applications, stating that she was physically present in Alaska at the time. As of February 14, 2006, Ms. S. has been maintaining her principal home in Albuquerque.³

¹ Exhibit 6, pages 1-2.

² The signature date on J.s application is clearly March 21, 2005. The date on Ms. S.'s application is somewhat obscure; it could be March 21 or March 1 of 2005. The record does not show when the division received the applications. Presumably, they were both mailed together in the same envelope on or after March 21, 2005. See Exhibit 1.

³ Exhibit 6, page 3.

III. Discussion

In order to qualify for a PFD, the applicant must be an Alaska resident on the date of application.⁴ A person who leaves Alaska is no longer an Alaska resident if the person does not intend to return to Alaska to remain indefinitely and make a home, or if the person is absent under circumstances that are inconsistent with the intent to return to Alaska to remain indefinitely and make a home.⁵

Ms. S. writes in part in her appeal that "I thought that my family and I had up to 2 yrs to report back to Alaska. I know in my heart that I wasn't trying to beat the system I know that I was residing there in Alaska the year of 2004."

While Ms. S. may have been a resident all through 2004, it is necessary to also be a resident at the date of application. By the time Ms. Steen submitted her applications, she had moved away from Alaska and decided not to come back any time in the near future. She has stated that she intends to return to Alaska in August 2007, but there is no evidence that she intends to make a home in the state when she does return. Further, Ms. S. has not submitted any evidence that demonstrates intent to return other than her assertion. Ms. S. has admitted that she maintains her principal home in New Mexico, and there is no evidence that she has any substantial ties to Alaska. These circumstances are inconsistent with the intent to make a home in Alaska. Because Ms. S. and J. were not Alaska residents when they submitted their applications, they are not eligible for 2005 dividends.

The division has raised a number of other reasons that Ms. S. and J. would not qualify. The division also points out that technically, under 15 A A C 23.993, Ms. S.'s "date of application" was not until some time much later than when she submitted the applications in March. But it is clear that the applicants were not Alaska residents at the time Ms. S. submitted the applications. They are ineligible for that reason, and it is unnecessary to further examine the case.

IV. Conclusion

Ms. S. and J. are not eligible for 2005 dividends because they were not Alaska residents when they applied. The division was correctly following the law when it made the decision to deny the applications and assess the erroneously paid dividends.

⁴ AS 43.23.005(a)(2).

⁵ AS 01.10.055(c).

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of L.S. and J.S. for a 2005 permanent fund dividends be AFFIRMED.

DATED this 29th day of May, 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 26th day of June, 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
6/26/07