

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

IN THE MATTER OF
R.G.

Case No. OAH 06-0784-PFD

2006 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

R.G. timely applied for a 2006 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. G. was not eligible, and it denied the application initially and at the informal appeal level. Mr. G. requested a formal hearing by written correspondence only. Upon review of the entire record, the administrative law judge affirms the division's decision.

II. Facts

The facts in this case are not in dispute. Before 2006, the last dividend Mr. G. applied for was in 1986. Mr. g. writes in his appeal, "I am an Alaska citizen. The only reason I ever left Alaska is because I was forcibly removed, I was extradited to Texas." In an accompanying affidavit, Mr. G. writes:

I received the Alaska permanent fund dividend check for the years 1982 to 1986. In July 1986 I was extradited to Texas.

Since the time I was extradited to Texas, I have been under the control of the Texas Dept of Correction Justice parole and probation division. I have never been allowed to return to Alaska.

I never intended to leave Alaska. Upon release I intend to return to Alaska forthwith and remain permanently.

III. Discussion

In support of his appeal, Mr. G. submits the following "Relevant Facts to Consider:"

1. I was forcibly removed from Alaska.
2. I should be considered under the old law and policies of the Alaska Permanent Fund Dividend Division. Not the new and revised AS 43.23.008 Allowable Absences.
3. Under the old policies of the P.F.D. to qualify I must of lived in Alaska and intend to remain permanently. If you are out side Alaska, you must have been a resident before leaving, and must show at all times during your absence an intent to return to Alaska and remain permanent and be absent for an allowable reason.

4. If I would of continued to file yearly for the P.F.D. check, my absence would of been excused.

5. I always intended to remain permanently in Alaska. When I am, if ever, released from prison I intend to return to Alaska forthwith.

There is no dispute that, under the laws in effect in 2006, Mr. G. would not qualify for a dividend. Because he was absent for all of the qualifying year and his absence reason is not allowed by AS 43.23.008, Mr. G. would be ineligible under AS 43.23.005(a)(6). He would also be ineligible under AS 43.23.005(a)(4) because he has not been physically present in the state for at least 72 consecutive hours at some time during the two year prior to 2006. There is also an open question about whether Mr. G. could be considered an Alaska resident when he is apparently unsure whether he will ever be released from prison in Texas.

Mr. G. misconstrues the PFD program as an entitlement that attaches for all future years when a person first applies for a dividend. Rather, eligibility for each year's dividend is determined in accordance with the laws in effect for that year. Mr. G.'s point number 4 above that "if I would of continued to file yearly for the P.F.D. check, my absence would of been excused" is incorrect. Every year, applications are evaluated for eligibility in accordance with the laws in effect for that year. Thus, Mr. G. is incorrect in his statement on his appeal form that "I am grandfathered under the old residency requirement." There is no provision in the PFD laws for "grandfathering" under prior laws.

IV. Conclusion

All applications for dividends are evaluated under the laws in effect for that dividend year. Under the laws that apply to all 2006 dividend applications, Mr. G. is not eligible. The division was correctly applying the law when it made the decision to deny Mr. G.'s application for a 2006 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of R.G. for a 2006 permanent fund dividend be AFFIRMED.

DATED this 15th day of June, 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 20th day of July, 2007.

By: Jerry Burnett
Director, Admin. Services

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

PFD Division
7/20/07