

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

IN THE MATTER OF )  
 )  
 D. L. )  
 ) Case No. OAH 06-0835-PFD  
 2006 Permanent Fund Dividend )

**DECISION & ORDER**

**I. Introduction**

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

**II. Facts**

Ms. L. was born and raised in Alaska. From 1999 until 2003 she was attending school in North Dakota. At all times, Ms. L. has maintained her Alaska driver's license and she has remained registered to vote in Alaska. Apparently after graduating from college in 2003, Ms. L. obtained full-time employment in North Dakota or Minnesota and she stopped applying for PFDs.

During most of 2004, Ms. L. was living in North Dakota and working at St. Francis Healthcare Campus, which is located in Breckenridge, Minnesota, along the North Dakota border. On December 22, 2004, Ms. L. flew to Alaska on a roundtrip ticket.<sup>1</sup> She was scheduled to return to North Dakota on December 30, 2004, but apparently changed her return date to January 2, 2005. On December 28, 2004, Ms. L. purchased a one-way ticket from Minnesota to Alaska for travel on February 5, 2005.

On November 15, 2005, Ms. L. applied for a job with Southcentral Foundation in Alaska, and on December 30, 2004, she interviewed for a job with Lithia Motors in Anchorage. On January 3, 2005, Ms. L. verbally informed her employer in Minnesota that she would be resigning. On January 4, 2005, Ms. L. prepared a written resignation letter. Her employer suggested that Ms. L. request a leave of absence instead, hoping that Ms. L. would decide to stay and also to preserve Ms. L.'s health insurance through February. On February 1, 2005, Ms. L. did request a personal leave of absence. On February 7, 2005, she was offered a position with Southcentral Foundation, and on February 24, 2005, Ms. L. formally resigned from St. Francis.

### III. Discussion

At a formal hearing, the person who has requested the hearing has the burden of proving that the division's decision was in error.<sup>2</sup> In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident through all of the qualifying year, which in this case is 2005.<sup>3</sup> The principal question in this case is whether Ms. L. established Alaska residency when she returned to Alaska on December 22, 2004, or when she returned to Alaska to stay on February 5, 2005, in which case she could not qualify for a dividend until 2007.

Ms. L. refers to AS 01.10.055(a), which states that a person establishes residency in Alaska "by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state." Ms. L. was physically present in Alaska in 2004, and she asserts that she intended to remain indefinitely. The division asserts that Ms. L. did not intend to remain indefinitely, as she had a return ticket back out of the state. The division characterizes Ms. L.'s first trip as a visit to Alaska from her home in North Dakota, followed by a one-way trip on February 5, 2005, at which time Ms. L. moved to Alaska to stay. Regardless of how the airline designated the tickets she purchased, Ms. L. characterizes her trips as a one-way trip from North Dakota to Alaska in 2004, followed by a roundtrip from Alaska to North Dakota and back in 2005.

The division's characterization of Ms. L.'s travel is more accurate. The statute speaks of remaining in the state for an indefinite time. When she arrived in Alaska, Ms. L. had a specific date at which she planned to return to North Dakota, and she did not have a scheduled return to Alaska. It was not until four days before she left Alaska that Ms. L. bought the ticket that brought her to Alaska to stay for an indefinite period of time.

Ms. L. asserts that she became a resident in 2004 because she was present in Alaska with the intent to stay indefinitely. Ms. L. overlooks AS 01.10.055(b)(1): "a person demonstrates the intent required under (a) of this section (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation...." Ms. L. asserts that her parents' home in Alaska was her principal home as of December 22, 2004. The record contains no evidence regarding Ms. L.'s housing arrangements in North Dakota. Ms. L. is an adult in her mid-twenties. It would require some explanation to see how her parents' house could be considered Ms. L.'s principle home, when she has apparently lived in some kind of housing in another state for a number of years, and there is no evidence she had terminated her lease or

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<sup>1</sup> Exhibit 2, page 8.

<sup>2</sup> 15 AAC 05.030(h).

whatever housing situation she had in North Dakota. But even if Ms. L.'s principal home was at her parents' house beginning on December 22, 2004, Ms. L. did not stay there for more than 30 days before returning to North Dakota for a longer period. It is obvious that Ms. L. was at least developing a plan to become an Alaska resident while she was in the state the first time. But there is not enough evidence to declare that the specific point at which Ms. L. established herself again as an Alaska resident had come and gone before the beginning of 2005.

#### **IV. Conclusion**

Ms. L. has not met her burden of proving that the division's decision was in error. There is insufficient evidence in the record to show that Ms. L. was an Alaska resident before the beginning of the qualifying year. The division's decision should be affirmed.

#### **V. Order**

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

DATED this 22nd day of June, 2007.

By: Signed \_\_\_\_\_  
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 19th day of July, 2007.

By: Signed \_\_\_\_\_  
Signature  
Dale Whitney \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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