

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

IN THE MATTER OF  
L. D.

Case No. OAH 07-0281-PFD

2005 Permanent Fund Dividend

DECISION

I. Introduction

L. D. timely applied for a 2005 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. D. was not eligible, and it denied the application initially and at the informal appeal level. Ms. D. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on June 22, 2007. Ms. D. appeared by telephone. Thomas Cote represented the PFD Division. The administrative law judge affirms the division's decision.

II. Facts

Ms. D. grew up in Alaska and had been living in the state in 2004. Towards the end of that year, Ms. D.'s mother suffered some serious health problems and was in the hospital. Ms. D. immediately flew down to be with her mother in February of 2005. Ms. D. stayed with her mother for a while, then flew back to Alaska. She removed the seats from her van and moved out of the cabin she had been living. Ms. D. packed as many of her belongings into her van as she could, and put other items such as TVs, a microwave, tires, and heirlooms in a friend's house. Ms. D. retrieved her dog from the friend who had been taking care of it and drove back to North Carolina to be with her mother in the middle of March, 2005.

Ms. D. filled out a paper application for a 2005 dividend on March 19, 2005. She completed the entire form, but did not answer the question, "are you in Alaska today." The division sent a letter to Ms. D. on June 24, 2005, asking whether Ms. D. had been in Alaska when she completed the application. That letter came back from the postal service marked, "box closed, unable to forward."<sup>1</sup> When the division sent Ms. D. a denial letter on August 18, 2005, that letter also came back with the same notation.<sup>2</sup>

<sup>1</sup> Exhibit 2.

<sup>2</sup> Exhibit 4.

At the time of the hearing in June, 2007, Ms. D. testified that she had a ticket to return to Alaska and will be back in July, 2007, after her absence of more than two years. In the middle of November, 2006, Ms. D. had plans to return to Alaska to work on a boat. Some of her gear and work clothes were already on board the Jade Alaska when it sank in Shelikof Strait in February 2007.

Ms. D.'s mother's condition improved after Ms. D. arrived in 2005, but she needed to use a wheelchair and the trailer she had been living in was not wheelchair accessible. Ms. D.'s mother bought a nearby place to live and gave her trailer to Ms. D. around April of 2006. Ms. D. has been living in the trailer since that time. She testified that she has housesitters who will take care of the trailer when she leaves, and she has made a will giving the trailer to her children in the event anything should happen to her. Ms. D. testified that she also owns five acres of undeveloped land in Alaska that she hopes to build on someday. Ms. D. testified that she was required to change her driver's license and van registration to North Carolina because of the length of time she had been there and "the property thing and everything."

### III. Discussion

A person is not eligible if at any time before the "date of application" the person has maintained their principal home in another state.<sup>3</sup> The "date of application" is the time that the division receives all information necessary to evaluate a person's eligibility, including information that the division has requested.<sup>4</sup>

Ms. D. was present in Alaska all through 2004. She testified that she has always been her intent to return to Alaska to remain indefinitely and make her home, in which case she would remain an Alaska resident if the circumstances of her absence were not inconsistent with Alaska residency.

In this case, it is difficult to say precisely when Ms. D.'s "date of application" was, because she never did return the information the division requested. But it was no earlier than the date the division denied her application on August 18, 2005. At that time, Ms. D. was maintaining her principal home in North Carolina. Ms. D. had closed her Alaska post office box, moved out of her Alaska residence, and moved her van, her dog, and everything she could carry to North Carolina. While she did have some belongings stored in a friend's house, all of the

<sup>3</sup> 15 A A C 23.143(d)(1). This regulation contains exceptions for people in the military, people attending school full time, people serving in Congress and state field offices, and people accompanying other eligible residents absent for these reasons. None of these circumstances appear to apply to Ms D.

<sup>4</sup> 15 A A C 23.993(b)(2).

circumstances together suggest that Ms. D.'s travel to North Carolina was more in the nature of a move than a visit. It is difficult to say whether Ms. D. ceased to be an Alaska resident, but it is more likely than not that by the time the division denied her application, or even the time at which the division requested more information on June 24, 2005, Ms. D. was maintaining her principal home in North Carolina. She is therefore ineligible for a 2005 dividend, in spite of the fact that Ms. D. was present in Alaska all through the 2004 qualifying year.

#### IV. Conclusion

Ms. D. was maintaining her principal home in another state before her date of application; she was not absent for one of the reasons listed in AS 43.23.008(a)(1) - (3), (9) - (11), or (13). She is therefore ineligible for a 2005 dividend under 15 A A C 23.143(d)(1) and the division was correct to deny her application.

#### V. Order

Upon adoption of this decision as the final administrative determination in this matter, the decision of the Permanent Fund Dividend Division to deny the application of L.D. for a 2005 permanent fund dividend shall be AFFIRMED.

DATED this 20th of September, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of January, 2008.

By: Jerry Burnett  
Director, Administrative Services

The undersigned certifies **that  
this date** an exact copy **of the  
foregoing was provided to the  
following individuals:**  
**Case parties**  
**1/9/08**