

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

IN THE MATTER OF)	
)	
S. H. M.)	OAH No. 07-0290-PFD
)	Agency No. 06341869_3
<u>2006 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

S. H. M. timely applied for a 2006 permanent fund dividend using the online application process. The Permanent Fund Dividend Division (“Division”) determined that she was ineligible and denied the application initially and at the informal appeal level. Ms. M. requested a formal hearing, which was conducted by Administrative Law Judge Kay L. Howard on July 9, 2007. Thomas Coté represented the Division.

Based on the record as a whole and after due consideration, Ms. M.’s application for a 2006 PFD is granted.

II. Facts and Proceedings

Ms. M. just turned 80 years of age.¹ She and her husband, D., have been married and lived in Anchorage since 1953. Ms. M. has not been employed outside the home during the entirety of their marriage. Mr. M. is a former banker.

The M.s completed their 2006 PFD applications online. While answering the questions on the adult supplemental schedule, they inadvertently answered “yes” to question 7L, which asks whether, at some point after December 31, 2004, Ms. M. had moved from Alaska and claimed moving expenses on her 2005 tax return.² While reviewing her application, the Division requested a copy of her 2005 tax return. In a series of emails and letters that went back and forth between Ms. M. and the Division, she politely resisted submitting the tax return.³ In the alternative, she provided a statement from Donald P. Nelles, CPA, who said he had prepared the M.’s 2005 tax return and that they did not claim moving expenses for tax year 2005.⁴

¹ Except where indicated, the facts are taken from the hearing testimony of D. and S. M.

² Exh. 1 at pg. 3.

³ See Exh. 3 at pgs. 1-2.

⁴ *Id.* at pg. 3.

On August 18, 2006, the Division denied Ms. M.'s application for a 2006 PFD because she indicated on her application that she had moved from Alaska after December 31, 2004, and claimed moving expenses on her 2005 tax return.⁵

Ms. M. requested an informal appeal and submitted with her appeal the first page of her and Mr. M.'s 2005 joint tax return. It had all of the financial information on the right hand side of the page redacted, and at line 26, it showed no deduction for moving expenses.⁶ On April 30, 2007, the Division denied Ms. M.'s informal appeal, stating she failed to provide the information requested by the Division, specifically, the complete 2005 tax return.⁷ This appeal followed.

At the formal hearing, Mr. and Ms. M. explained that they had not wanted to submit a complete, unredacted copy of their 2005 tax return to the Division because they are very protective of their privacy. Mr. M. testified that in the past he had been the target of a kidnapping and extortion plot, and as a result, he takes great pains to protect their personal information. However, after the hearing they provided a complete, unredacted copy of their 2005 federal income tax return, which was reviewed by the administrative law judge *in camera* (privately in chambers) and not copied to the Division.

The 2005 federal income tax return of D. and S. M. does not include any deductions for moving expenses, which would have been reported on line 26 of page one. Neither does the return include a Form 3903, on which deductions for moving expenses would have been itemized and transferred to page one of the return.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must be an Alaska resident as defined by law at the time of application, and in addition, meet certain eligibility requirements set forth in the Division's regulations.⁸ The sole issue in this appeal is whether, between January 1, 2005, and the date she filed her application for the 2006 PFD, Ms. M. moved from Alaska and claimed moving expenses on her 2005 federal income tax return. It is clear from the record in this appeal that Ms. M. did not move from Alaska or claim moving expenses on her 2005 tax return, so she is entitled to the 2006 PFD.

⁵ Exh. 4 at pg. 1.

⁶ Exh. 6 at pg. 3.

⁷ Exh. 10 at pg. 1.

⁸ AS 43.23.005(a)(2).

The issue in this appeal is controlled by 15 AAC 23.143(d)(10). This Division regulation states that:

(d) An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

(10) moved from Alaska

(A) for a reason other than one listed

(i) in AS 43.23.008 (a)(1) - (3) or (9) - (11); or

(ii) in AS 43.23.008 (a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (i) of this subparagraph; and

(B) claiming (sic) moving expenses as a deduction on the individual's federal income tax return, unless the individual

(i) files an amended federal income tax return deleting the claimed moving expenses as a deduction; and

(ii) provides proof from the Internal Revenue Service that the individual filed an amended return;

The record shows that D. and S. M. did not move from Alaska during 2005, the qualifying year for the 2006 PFD – in fact, they still reside here – nor did they claim moving expenses on their 2005 federal income tax return. Thus, there are no impediments to Ms. M. receiving the 2006 PFD.

It is easy to understand how the parties got to be at such odds in this case. The Division was pursuing the information it believed was necessary to resolve Ms. M.'s 2006 PFD application. The M.s, on the other hand, were creatively suggesting alternative methods of providing the information the Division needed, in light of their need not to divulge sensitive and private financial information. Neither side acted unreasonably in this matter.

One observation might be useful for the Division in future cases, however. In his closing statement at the end of the hearing, the Division's representative stated there was "no evidence" Ms. M. did not claim moving expenses on her 2005 tax return. That statement was inaccurate, given that there was quite a bit of evidence already in the record even before the M.s submitted their complete tax return: their written statements and hearing testimony, their CPA's written statement, and the redacted copy of the first page of their 2005 tax return. The Division might not have believed the evidence submitted up to that point was convincing, but it was incorrect to assert there was "no evidence" in the record to support Ms. M.'s appeal.

IV. Conclusion

Ms. M. met her burden of proving by a preponderance of the evidence that she mistakenly answered yes to the question whether during the qualifying year for the 2006 PFD she had moved from Alaska and claimed a deduction for moving expenses on her 2005 federal income tax return. Ms. M. did neither. Thus, she is entitled to a 2006 PFD.

V. Order

IT IS HEREBY ORDERED that the application of S. H. M. for a 2006 permanent fund dividend is GRANTED.

DATED this 30th day of November, 2007.

By: Signed
Kay L. Howard
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.

Under AS 25.27.062 and AS 25.27.250, the obligor’s income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of December, 2007.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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