

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

In the Matter of:

W.J., M.J., and L.J.

2006 Alaska Permanent Fund dividend

OAH No. 07-0487-PFD

DOR No. 0600618-0

DECISION and ORDER

I. Introduction

W. and M. J. and their adult son L.J. filed timely applications for a 2006 Alaska Permanent Fund dividend. The Permanent Fund Division denied the application on the grounds that they did not meet the statutory definition of a "state resident" and that they had taken several disqualifying actions.¹

The J.'s filed timely appeals which were referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a hearing on September 20, 2007. Ms. J. participated and testified; Thomas Cote represented the division.

Based on the record and the testimony, the administrative law judge finds that the J.'s maintained their principal residence in another state while absent from the state for a disqualifying reason, and they are therefore ineligible for the 2006 Alaska Permanent Fund dividend. Accordingly, the division's decision is affirmed.

II. Facts

W. and M. J. and their family, including their five-year-old son L., moved from Texas to Alaska in 1961. They settled in Anchorage, where they raised their children. In 2005, the elder J.'s were living in a trailer court in Anchorage. Both were in declining health: Mr. J., by then aged 72, had an arthritic knee and an artificial ankle, and suffered from heart and liver problems.² The couple decided to relocate temporarily to Texas, where they had family relations and owned a parcel of land that had previously belonged to Mr. J.'s mother.

¹ Ex. 6, pp. 1, 8, 15. See AS 43.23.095(7); 15 A A C 23.143(d)(1), (12), (14), (17).

² Ex. 2, p. 16.

In September, 2005, the J.'s stored their boat and snow machine in Anchorage, packed their household belongings, and moved to Texas for the winter, planning to return to Alaska in the spring of 2006. L.J., then aged 49, moved with them to help care for them.

In Texas, the J.'s moved into a trailer on the lot they owned. As the winter wore on, however, W. and M. J.'s health deteriorated. Both were hospitalized, Mr. J. multiple occasions, and Ms. J. had surgery. The couple decided that until their health was better, they could not return. They remained living in the Texas trailer at the time of the administrative hearing in this case, pending improvement in their health. continues to live with them as a care provider.

III. Discussion

The division contends that the J.'s are ineligible for the 2006 dividend because they: (1) are not state residents as defined by law; and (2) engaged in disqualifying actions by (a) maintaining their principal home in another state; (b) registering to vote in another state; (c) purchasing resident hunting or fishing licenses in another state; and (d) obtaining benefits in another state by disclaiming Alaska residency.

(1) The J.'s Maintained an Intent to Return to Alaska and Remain Indefinitely

The definition of state resident as it applies to the Alaska Permanent Fund dividend program is set out in AS 43.23.095, which states in part:

(7) "state resident" means an individual who is physically in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055 or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of AS 01.10.055.

In this case, the preponderance of the evidence is that the J.'s planned to temporarily relocate to Texas for the winter, that they planned to return in the spring of 2006, and that it is because of Mr. J.'s deteriorating health that they have delayed their return. They are long-time residents of Alaska, their grandchildren and other relatives live here, and they have stored their vehicles here pending their return.

The division contends that notwithstanding these long-standing and well established family and personal connections to Alaska, after relocating to Texas the J.'s took actions inconsistent with an intent to return to Alaska and remain indefinitely and that they are therefore

not state residents for purposes of the Alaska Permanent Fund dividend as a matter of law. The division relies on AS 01.10.055(c), referenced in AS 43.23.095(7), which states:

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state..., or performs other acts or is absent under circumstances that are inconsistent with the intent [to remain in the state indefinitely and to make a home in the state].

The division also relies on 15 A A C 23.143(a), which states:

(a) An individual's intent to...return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not be themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:

- (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
- (2) ties to another state or country that indicate continued residency in the other state or country;
- (3) taken other action during or subsequent to the qualifying year that is inconsistent with an intent to remain in Alaska indefinitely.

As previously stated, it is undisputed that the J.'s were Alaska residents prior to relocating to Texas. The preponderance of the testimony and evidence is that their relocation to Texas was intended to be temporary, and that throughout their absence the J.s maintained an intent to return to Alaska when their health permitted and then to remain indefinitely.

The division contends that because the J.'s have taken some actions that are considered inconsistent with an intent to return to Alaska and remain indefinitely, as a matter of law they are no longer Alaska residents as defined AS 01.10.055(c), relying on 15 A A C 23.143(a). But AS 01.10.055(c) does not mandate a focus on the individual's acts in isolation, and 15 AAC 23.143(a) states only that the department will consider the specified factors in deciding whether the individual has the requisite intent. Under both the statute and the regulation, an individual's acts should be considered in light of all of the circumstances.³ In this case, considering all of the circumstances, including the existence of the specific factors

³ See AS 43.23.015(a) ("The commissioner shall consider all relevant circumstances in determining the eligibility of an individual.").

mentioned in subsections (a)(1)-(3), the preponderance of the evidence is that the Jaineses at all times retained the intent to return to Alaska and remain here indefinitely.

(2) The J.'s Engaged in a Disqualifying Activity

In addition to establishing Alaska residency and maintaining the intent to return to Alaska and remain indefinitely, an individual must meet the eligibility requirements established by the division in its regulations.⁴ In its prior decision and on appeal, the division relies on four specific types of conduct listed in 15 A A C 23.143(d) as grounds for disqualification for the 2006 dividend: (a) maintaining a principal home in another state; (b) registering to vote in another state; (c) purchasing resident hunting or fishing licenses in another state; and (d) obtaining benefits in another state by disclaiming Alaska residency. If the preponderance of the evidence shows that the Jaineses have engaged in any of these four specific activities, they are disqualified from obtaining a 2006 dividend without regard to their intent to return to the state.

15 A A C 23.143(d)(1) provides that an otherwise eligible applicant is disqualified if the applicant has "maintained the individual's principal home in another state..., except while absent for a reason listed (A) in AS 43.23.008(a)(1)-(3) or (9)-(11), or (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph." The disqualification occurs if the disqualifying action is taken at any time beginning January 1 of the qualifying year (in this case, 2005) through the date the application is complete.

Beginning in the fall of 2005, and continuing through the date their applications were complete, the J.'s lived in a trailer located on property they own in Texas, while some household belongings were stored in Alaska. Their "principal home" during that time was the trailer in Texas: the family had no permanent place of residence in Alaska, and their presence in Texas was not transient. Therefore, under 15 A A C 23.143(d)(1), they are disqualified from eligibility for the 2005 dividend unless absent for a reason listed in AS 43.23.008(a)(1)-(3) or (9)-(11).

None of the referenced subsections applies. None of the J.'s was a full-time student during 2004, and thus neither AS 43.23.008(a)(1) or (2) applies. None of them was serving on

⁴ In a number of prior cases, the Alaska Supreme Court has upheld regulations restricting eligibility for a permanent fund dividend beyond the specific statutory requirements of AS 43.23.005(a) and AS 43.23.008. *See Church v. State. Department of Revenue*, 973 P.2d 1125 (Alaska 1999); *Brodigan v. Alaska Department of Revenue*, 900 P.2d 728 (Alaska 1995); *State. Department of Revenue. Permanent Fund Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *State. Department of Revenue. Permanent Fund Division v. Cosio*, 858 P.2d 621 (Alaska 1993).

active duty in the military, and thus AS 43.23.008(a)(3) does not apply. Finally, none of them was an elected official or the official's staff, or a state employee, and thus AS 43.23.008(9)-(11) do not apply. Because the J.'s maintained their primary residence in Texas from the fall of 2005 until their applications were complete, during a time when none of them was absent for a reason listed in AS 43.23.008(a)(1)-(3) or (9)-(11), they are disqualified under 15 A A C 23.143(d)(1).⁵

IV. Conclusion

It is uncontested that the J.'s were Alaska residents prior to January 1, 2005. The preponderance of the evidence is that through the date their applications were complete, the J.'s maintained the intent to return to Alaska and remain indefinitely. The preponderance of the evidence is that the J.'s are ineligible for a 2005 Alaska Permanent Fund dividend, because they maintained their principal residence in another state during the qualifying period, in violation of 15 A A C 23.143(d)(1).

V. Order

1. The division's denial of W. M., and L. J.'s applications for a 2006 Alaska Permanent Fund dividend is **AFFIRMED**
2. The applications of W.J., M.J., and L.J. for a 2006 Alaska Permanent Fund dividend are **DENIED**.

DATED January 7, 2008

Andrew M. Hemenway
Administrative Law Judge

⁵ Because the J.'s are disqualified under this provision, it is unnecessary to address the alternative grounds for disqualification cited by the division.

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 7th day of February, 2008.

By: Andrew M. Hemenway
Administrative Law Judge

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

PFD Division
2/8/08