

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

In the Matter of:

D.C., individually and *ex rel.* W. and W. G., and J.O.

2006 Alaska Permanent Fund dividend

OAH No. 07-0653-PFD

DOR No. 06558603-8

DECISION and ORDER

I. Introduction

D.C. filed timely applications for a 2006 Alaska Permanent Fund dividend for herself and her minor children W. and W. G. along with a timely application for J.O. The Permanent Fund Division denied Ms. C.'s and Mr. O.'s applications on the grounds that they: (1) severed their residency in 2004 and did not return to Alaska prior to January 1, 2005; (2) maintained a principal home in another state after December 31, 2004; and (3) were not state residents as defined by law throughout the qualifying period.<sup>1</sup> As to Ms. C. the division also denied the application on the ground that she had obtained a benefit in another state during the qualifying period by establishing or claiming residence in that state.<sup>2</sup> The division denied the minor children's applications on the grounds that they (1) did not have an eligible sponsor; (2) were not state residents during all of 2005; and (3) their most recent Alaska residency began after January 1, 2005.<sup>3</sup>

The applicants filed appeals, which were referred to the Office of Administrative Hearings, and the assigned administrative law judge conducted a hearing on December 10, 2007. Ms. C. and Mr. O. participated and the division was represented by Kimberly Colby. Because none of the applicants severed their residency, and none of them took a disqualifying action during the qualifying period, the division's decision is reversed.

II. Facts

D.C. moved to Alaska in 1982. Her two children, W. and W., were born in Alaska in 1989 and 1998 respectively. After she and her husband divorced, both remained residents of the state, living on the Kenai Peninsula. In 2004, Ms.C. and her two children

<sup>1</sup> Ex. 5, page 1 (D.C.); Ex. 5, page 8 (J.O.)

<sup>2</sup> Ex. 5, page 1 (D.C.)

<sup>3</sup> Ex. 5, page 15 (W.G.); Ex. 5, page 22 (W.O.)

were living in rented premises with her friend, J.O. Mr. O. was born in Alaska and has lived here all his life.

In the summer of 2004, Ms. C. and Mr. O. decided to travel to Oregon to visit relatives, including the children's' grandparents. In July of 2004, they stored their household belongings with Ms. C.'s mother (also a Kenai resident) and friends and embarked on an extended road trip to Oregon, planning to return to Alaska in time for the children to resume school in the fall. Because the trip was planned as only temporary, the couple maintained their mailbox and their Alaska drivers' licenses.

The group drove down the Alaska Highway in a van. By the time they reached Oregon, the truck had developed mechanical problems. After spending the summer visiting family, Ms. C. and Mr. O. were unwilling to risk a vehicle breakdown on the return journey. They decided to temporarily stay at a recreational vehicle park in Oregon, while Mr. C. looked for work to pay for repairs to the van and for travel expenses.

Mr. O. found temporary work on a construction job, and in order to make ends meet Ms. C. applied for and received food stamps. Food stamps are paid by monthly credits to a debit card. Ms. C.'s last credit was issued to her debit card in early December, 2004. By December, the couple was ready to make the return trip, in time for the children to return to school at the end of the Christmas break. The return trip was uneventful, and they crossed the border into Alaska on December 27, 2004. They arrived at their destination in Alaska on January 3, 2005, visiting Ms. C.'s sister in Wasilla for a few days before returning to the Kenai Peninsula, where they have resided ever since.

### III. Discussion

The division's position statement asserts that the Ms. C. and Mr. O. were denied a 2005 dividend because "they moved from Alaska on July 9, 2004, maintained their principal home in Oregon, obtained public assistance benefits in Oregon that required a claim of Alaska residency and moved back to Alaska on January 3, 2005."<sup>4</sup> The division argues that the 2005 decision establishes that Ms. C. and Mr. O. severed their residency in Oregon in 2004, and that the evidence does not show that they returned and re-established residency in Alaska prior to January 1, 2005. But the division has not identified any basis for denying the

<sup>4</sup> Ex. 9, p. 3.

2006 dividend if they did not sever their residency in 2004, unless they maintained their principal home in another state after December 31, 2004. Thus, the only factual issues to be resolved are (1) whether the Oregon sojourn terminated their Alaska residency; and (2) whether they maintained their principal home in Oregon after December 31, 2004.

A. The 2005 Decision Does Not Govern

The 2005 decision denying the dividend is not a conclusive determination that Ms. C. Mr. O. and the children severed their residency in 2004. The denial of the application was not contested in a formal appeal, and thus the decision denying the dividend did not resolve any facts: it is a unilateral decision by the division, not an adjudication entitled to preclusive effect in subsequent litigation.

B. Ms. C. and Mr. O. Maintained the Intent to Return and Remain

The preponderance of the testimony and evidence establishes that Ms. C. and Mr. O. temporarily left Alaska in order to visit relatives in Oregon, that their visit was extended due to unforeseen circumstances, and that they returned to Alaska less than six months after they had left. Leaving Alaska for extended periods of time to visit relatives, and particularly leaving during the summer so that children can visit their grandparents, is not inconsistent with an intent to return to Alaska and remain indefinitely. Mr. O. is a lifelong resident of Alaska. Ms. C. has lived here since 1982, when she was twelve; she married and raised her two children here, and her mother and sister continue to live here, as does the children's' father. Ms. C. and Mr. O. stored their household belongings when they temporarily relocated and they kept their Alaska mailbox and drivers' licenses. There is no indication that either of them established any ties with Oregon that would indicate an expectation of continued residency in that state. The overwhelming preponderance of the evidence is that the couple unexpectedly extended their visit and that they never relinquished the intent to return to Alaska and remain indefinitely.

C. Neither Ms. C. nor Mr. O. Severed Alaska Residency

AS 01.10.055 establishes the statutory test for establishing and severing residence in Alaska for purposes of the Alaska Permanent Fund dividend program.<sup>5</sup> AS 01.10.055 states:

<sup>5</sup> See AS 43.23.095(7).

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(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 required under (a) of this section to remain a resident of this state.

Under AS 01.10.055(c), a person severs residency if the person: (1) establishes residency in another state; (2) claims residency in another state; or (3) performs other acts or is absent under circumstances that are inconsistent with the intent to remain a resident of Alaska.

*1. Neither Ms. C. nor Mr. O. Established Residency in Oregon*

The term "establishes residency" is given a definite and precise meaning in AS 01.10.055(a): presence in Alaska with the intent to remain indefinitely and to make a home in the state. Under the doctrine of statutory construction *in pari materia*, a word or phrase used in one subsection of a statute is generally given the same meaning when repeated elsewhere in another subsection of the same statute.<sup>6</sup> Thus, under AS 01.10.055(c), to sever residency in Alaska by establishing residency in another state, a person must be in the other state with the intent to remain indefinitely and make a home in the state. In this case, the clear preponderance of the evidence is that neither Ms. C. nor Mr. O. at any time has had an intent to remain indefinitely in any other state than Alaska. They did not "establish residency" in Oregon within the meaning of AS 01.10.055(a), and therefore they did not sever residency under the first method identified in AS 01.10.055(c).

*2. Ms. C. Did Not Claim Permanent Residency in Oregon*

The division argues Ms. C. severed her residency in Alaska because she claimed Oregon residency when she obtained food stamps in Oregon in 2004.

On that point, Ms. C. admitted that she obtained food stamps in Oregon, but she did not recall claiming residence in Oregon in the process. The division did not submit any evidence that an individual must be a resident of Oregon in order to receive food stamps in that state, and it did not submit any evidence that Ms. C.'s application included a claim of Oregon

residency. For this reason, the preponderance of the evidence is that Ms. C. did not claim residency in Oregon.

More fundamentally, even Ms. C.'s application included a claim of Oregon residency for purposes of obtaining food stamps, Ms. C. did not claim permanent residency, because she retained the intent to return to Alaska and remain there indefinitely: a claim of residency for purposes of obtaining food stamps would only have been an acknowledgment of temporary residency. Just as an individual must actually intend to remain in another state in order to "establish residency" there within the meaning of AS 01.10.055(c), so too an individual must actually intend to remain in another state in order to "claim residency" within the meaning of AS 01.10.055(c). Thus, even if the division had shown that Ms. C. claimed temporary residence in Oregon for purposes of food stamps, that would not show that she severed her status as a permanent resident of Alaska under the second method specified in AS 01.10.055(c).

### 3. *The Acts and Circumstances Are Consistent With Alaska Residency*

An individual who performs an act listed in 15 A A C 23.143(d) at any time from January 1 of the qualifying year through the date of application is ineligible for a dividend. It is undisputed that Ms. C. and Mr. O. were disqualified for the 2005 dividend based on their actions in 2004. The central point of the division's argument is that because they were ineligible for the 2005 dividend pursuant to 15 A A C 23.143(d), Ms. C. and Mr. O. severed their residency as a matter of law. The division's argument misconceives the effect of 15 A A C 23.143(d).

While Alaska residency is a requirement of eligibility, it is not the only requirement. In addition to being an Alaska resident, an individual must be physically in the state "at all times during the qualifying year," or absent for a reason allowed by law,<sup>7</sup> and meet the eligibility requirements established by the division in its regulations.<sup>8</sup> Some of those eligibility requirements are set out in 15 A A C 23.143(d).

<sup>6</sup> See, e.g., Keane v. Local Boundary Commission, 893 P.2d 1239, 1247 (Alaska 1995); State v. Bingaman, 991 P.2d 227, 229 n. 6 (Alaska App. 1999); Anderson v. Municipality of Anchorage, 645 P.2d 205, 210-211 (Alaska App. 1982); Commissioner of Internal Revenue v. Estate of Ridgway, 291 F.2d 357 (3<sup>rd</sup> Cir. 1961).

<sup>7</sup> AS 43.23.005(a)(6).

<sup>8</sup> AS 43.23.015(a) provides that the commissioner may adopt regulations "for determining the eligibility of individuals for permanent fund dividends." 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);

15 A A C 23.143(d) provides an administratively convenient method for assessing the eligibility of applicants for a particular dividend. While the actions listed are relevant to the determination of residency, none of them is in itself conclusive of an individual's intent: all of the specifically listed disqualifying acts for a particular year could, depending on the circumstances as a whole, be consistent with the intent to return to Alaska, to make a home in Alaska, and to remain in Alaska indefinitely. Thus, while an act specified in 15 A A C 23.143(d) disqualifies an applicant for the year in which the act is taken, that act does not in itself establish that Alaska residency has been severed for purposes of AS 01.10.055(c).

In this case, as has previously been established, the circumstances as a whole establish that Ms. C. and Mr. O. at all times retained the intent to return to Alaska and remain indefinitely, and that they remained Alaska residents throughout their time in Oregon, notwithstanding that they were ineligible for the 2005 dividend pursuant to 15 A A C 23.143(d).

D. Ms. C. and Mr. O. Did Not Maintain a Home In Oregon in 2005

The division argues that Ms. C. and Mr. O. established their principal home in Oregon in 2004 and maintained that home after January 1, 2005. The division relies on their initial applications, which state that they returned to Alaska on January 3, 2005.

Ms. C. and Mr. O. testified at the hearing that the January 3 date they provided on their applications was the date they arrived at their destination in Alaska, and that they had crossed the border into Alaska on December 27, 2004. Their testimony was credible and there was no evidence to refute it. In any event, the date on which they crossed the border is immaterial. Even if they had crossed the border on January 3, 2005, they had long since left their former principal home in Oregon; once they left their principal home they were transient, living in a van, en route to Alaska where they planned on re-establishing their principal home. They did not maintain a principal home in Oregon after they moved out of the recreational vehicle park in that state.

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).

IV. Conclusion

It is uncontested that Ms. C. and Mr. O. were Alaska residents prior to July, 2004. The preponderance of the evidence is that they did not sever their residency during the time they were in Oregon. They moved back to Alaska prior to January 1, 2005, and they did not engage in any disqualifying conduct in 2005. The couple and Ms. C.'s minor children are eligible for 2006 Alaska Permanent Fund dividends.

V. Order

1. The division's denial of the applications of D.C., J.O., W.G., and W.G. for a 2006 Alaska Permanent Fund dividend is REVERSED.

2. The applications of D.C., J.O., W.G., and W.G. for 2006 Alaska Permanent Fund dividends are GRANTED.

DATED January 24, 2008

Andrew M. Hemenway  
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 21st day of February, 2008.

By: Andrew M. Hemenway  
Administrative Law Judge

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

PFD Division  
2/21/08