

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

IN THE MATTER OF

L. and L. T.

Case No. OAH 07-0666-PFD

2006 Permanent Fund Dividend

DECISION

I. Introduction

L. and L. T. applied for 2006 permanent fund dividends. The Permanent Fund Dividend Division determined that the T.'s were not eligible, and it denied the applications initially and at the informal appeal level. The T.'s requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on December 17, 2007. Mr. and Ms. T. appeared by telephone. Kim Colby appeared by telephone on behalf of the division. The division's decision is affirmed.

II. Facts

In November of 2005 the T.'s left Alaska and went to New York for Thanksgiving. Late in November or early in December of 2005 the T.'s progressed from New York to Texas where they stayed for a time with Mr. T.'s parents. In December of 2005 Mr. T. began working full-time in Texas in his field as an electrician. Mr. T. testified that the job was temporary, depending on the project and the needs of the employer, as is customary in the construction industry.

In January of 2006 the T.'s had a dispute with Mr. T.'s parents, and were forced to leave the home in which they were staying. In February of 2006 the T.'s went to New Mexico, where Mr. T. again obtained employment. Initially the family stayed with a friend of Ms. T.'s, but they soon rented their own home. In April of 2006 Ms. T. returned to Alaska for about one month with two of her children, and then returned to New Mexico. It appears that around May of 2006 the T.'s split up for a time. Mr. T. went back to Texas and stayed with his family for a time, and then returned to Alaska and went to work in Delta Junction. Ms. T. stayed in New Mexico until February of 2007, and then returned to Alaska.

Before they left Alaska in 2005, the T.'s withdrew the children from school in Anchorage. Ms. T. testified that she did so because the Anchorage School District advised her that that was the appropriate procedure when someone goes on a five-week vacation. When they

arrived in Texas the T.s' enrolled the children in school in Texas, and they attended school there until February of 2006. The T.'s then enrolled the children in school in Albuquerque. In February of 2007 they were enrolled back in Alaska.

While they were out of state, the T.'s kept their two vehicles registered and stored in Alaska. They also kept a storage unit in Alaska that contained most of their belongings.

III. Discussion

According to 15 A A C 23.163(d)(1), persons maintaining their principal home in another state before the date of application are ineligible for a permanent fund dividend unless the person is absent for certain reasons that do not apply to this case, such as military service or education. This is true even if the person remained an Alaska resident at all times and maintained the intent to return to Alaska. The "date of application" is, under 15 A A C 23.993(b), not the date the person submits an application form, but the last date that the person has provided all information required to evaluate the applicant's eligibility, including any supplemental material the division may request.

The T.'s story is an unusual one, and there are a number of issues that could be addressed. But the case can be resolved by observing the fact that it is more likely than not that from the period of December, 2005, until May of 2006, both Mr. and Ms. T. were maintaining their principal home in another state. In Texas, it appears that the T.'s had intended to stay with Mr. T.'s father for some time. Mr. T. obtained employment, they enrolled the children in school, and they changed their mailing address to Texas for important matters such as their bank accounts. After they went to New Mexico, The T.'s were living in a home they had rented there, Mr. T. was working full-time, and the children were enrolled in school. The T.'s testified that the only thing keeping them from returning to Alaska was the price of a return ticket, yet Ms. T. and two of the children actually returned to Alaska for a month during the period of more than a year that she was absent, and then returned to her rented home in New Mexico. The T.'s testimony that they were stranded outside of Alaska by the lack of funds to get back home was lacking in credibility.

While it could be said that in some sense the T.'s were also maintaining a home of sorts in Alaska by storing their belongings and their vehicles, under the circumstances of this particular case it must also be said that at they were absent time their principal home was in Texas and then in New Mexico.

IV. Conclusion

Because they were maintaining their principal home in Texas at least before their dates of application for 2006 dividends, the T.'s are not eligible for 2006 dividends regardless of whether they remained Alaska residents and maintained the intent to return to Alaska. The division's decision to deny the applications was correct.

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 applications of L. and L. T. for 2006 permanent fund dividends is AFFIRMED.

DATED this 26th day of February, 2008.

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 April, 2008.

By: Jerry Burnett
Director, Admin. Services

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

PFD Division
4/9/08