

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

IN THE MATTER OF

G. and A. D. and their children A. and R. D.

2006 Permanent Fund Dividend

Case No. OAH 08-0061-PFD  
Agency case no. 2006-004-3483

**DECISION**

**I. Introduction**

G. and A.D. timely applied for 2006 permanent fund dividends for themselves and on behalf of their children A. and R. The Permanent Fund Dividend Division initially granted the applications, but later determined that the applicants were not eligible. The division then denied the applications and assessed the dividends that had been paid, and affirmed its decision after an informal hearing. The applicants requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal March 3, 2008. Mr. and Ms. D. appeared by telephone. Susan Pollard represented the division by telephone. The evidence shows the applicants to be eligible for 2006 dividends.

**II. Facts**

At the beginning of 2006, the D.'s had been living in Alaska for a number of years. Mr. D. had been attending the University of Alaska Anchorage, and he had just graduated in December of 2005 with a bachelor's degree in economics and finance. During his years at UAA, Mr. D. had been working seasonally during the summers in the construction industry. Ms. D. had been running a profitable food business. The couple owned two properties in Alaska, their home and a rental property.

During the fall of 2005, Mr. D. had been looking for a permanent job in Alaska. He had applied with several different employers in Alaska, and had attended job fairs at UAA. At one job fair, BP had a booth, and Mr. D. entered into a discussion with BP recruiters. The recruiters referred Mr. D. to the BP website to look for available positions; Mr. D. did so, and applied for a job with BP in Alaska. Around the last week of December, 2005, BP called Mr. D. to say that he had been declined for the job in Alaska. The company told him, however, that there was a possibility of other positions opening in near future in the Lower 48, and the company asked if Mr. D. might be interested in being considered for one of these

positions. The company indicated that if Mr. D. were to accept a position with BP outside of Alaska, there was a very good chance that after a few years there would be an opportunity for him to return to the state, when he had more experience with the company. This was the first time that he had seriously considered employment out of the state, but Mr. D. replied that yes, he might be interested in such a job if an opportunity arose.

The D.'s filed their PFD applications on January 4, 2006, using online application forms and electronic signatures. The division did not request any supplemental information before the applications were ultimately approved and paid in a routine manner.

On January 7<sup>th</sup>, 2006, just a day before the D.'s left for a vacation in Mexico, Mr. D. received a phone call from BP telling him that he would soon be receiving a formal job offer from the company to work out of state. At this point Mr. D. did not know all the details of the position, but he knew that a firm offer was forthcoming. He also knew that if he did accept the job, he would be expected to start work very soon, within a month or two. At this point, the D.'s did not decide with absolute certainty to take the job and move out of state. But they did put a "for sale" sign on their house before they left for Mexico.

The D.'s had been planning a vacation to Mexico for some time to celebrate Mr. D.'s graduation, and Ms. D. had taken leave from her job at the Alaska Club, where for years she had been earning about \$100 per month,<sup>1</sup> starting on January 5, 2006. The D.'s testified that their house was clean and in good condition, and because they live an uncluttered lifestyle, they did not have to do much to have the house ready to sell. They did not list the house with a real estate agent, but put the matter into the hands of a trusted friend who, like them, had experience in real estate transactions. The D.'s had been trading in Anchorage real estate themselves, and were not in need of an agent's services.

It appears that the D.'s were in a position to conduct business while on vacation in Mexico. Mr. D. received an official offer from BP on January 11, 2006, and he decided to accept it. A buyer was found for the house almost immediately, and the D.'s entered a contract to sell on January 13, 2006. The D.'s returned to Alaska on January 31, 2006, and they left for Chicago on February 8, 2006. The sale of their house closed on February 14 or 15 of 2006.

<sup>1</sup> Exhibit 2f, page 3.

The D.'s came to the division's attention through a general audit process. The division obtained information for approximately 178,000 Alaskans and asked the state Department of Labor to identify any of these people who lacked reported Alaska wages in the fourth quarters of 2005 and in 2006. The division then took this list of Alaskans with no reported wages to Alaska USA Federal Credit Union with a subpoena, and obtained a list of all the people with no reported wages who had Alaska USA accounts for which statements were being mailed outside the State of Alaska. This produced a list of 262 individuals, including the D.'s The division then checked with a credit bureau, and determined that as of March 6, 2006, two creditors had reported an Illinois address for Mr. D.

### **III. Discussion**

The division raises two issues. First, the division asserts that the D.'s knew they would be leaving the state at the time they filed their online applications, and that they were therefore not Alaska residents at that time. Second, the division argues that the D.'s applications were not complete until much later than the time they filed online, and that by the time the applications were complete the D.'s had already moved to Illinois and severed their Alaska residency.

According to 15 A A C 23.143(h),

A person who on the date of application knows the individual will be moving from Alaska at a specific time to a specific destination for a reason other than one allowed by AS 43.23.008(a) does not have the intent to remain in Alaska and is not eligible for a dividend.

The fact that the D.'s put their house up for sale just days after filing their applications and had actually packed up and left the state in little more than a month after filing their applications is enough on its face to at least raise a suspicion that the D.'s already knew they would be leaving the state when they filed their applications. But the evidence shows that such suspicions are not warranted in this case. It is clear that at the time the D.'s filed their applications, Mr. D.

had discussed the possibility of moving out of state with BP and had expressed interest. He had almost certainly given the idea some thought, and probably discussed it with Ms. D. He may have gone so far as to decide that, if offered a certain job at a certain rate of pay, he would accept it. But the fact is that until January 7, 2006, Mr. D. did not know when the call from BP would come, nor did he know if the call would actually come. Until an actual offer came from BP, the D.'s financial ties were such that they did not appear to be in a position to immediately leave Alaska. Because the D.'s decision to leave the state was contingent on a job offer from BP, the soonest the D.'s could have known they would be leaving Alaska was

January 7, 2006, three days after they filed their online applications. But even at this point, the D.'s were not certain of the terms BP was prepared to offer.

The division argues that although the D.'s filed their online applications on January 4, 2006, their applications were not complete until sometime much later. According to 15 A A C 23.993(b),

For the purposes of AS 43.23.005(a) and this chapter, "date of application" means the date on which an application for a dividend that was timely filed is complete; in this subsection, an application is

- (1) "timely filed" if it meets the requirements of 15 A A C 23.103(a) and 15 A A C 23.103(g);
- (2) "complete" if it provides all information that is required by AS 43.23 and this chapter, including supplemental or additional information required by or requested under 15 A A C 23.173, that support the applicant's claim of residence, physical presence in the state, and eligibility for the dividend.

The record does not show when the division initially made the decision to grant the D.'s applications. The division began investigating the D.'s in August of 2006, but it paid their dividends in the fall of 2006. It was not until January 29, 2007, that the division issued a decision to deny the applications and assess the dividends it had already paid.

The division argues that even if an application has been approved for payment, the application is not "complete" if the division then requests further information. If a dividend has been paid to a person who is not eligible, the division may recover the dividend from someone who applied in good faith so long as notice of improper payment is sent to the person within three years.<sup>2</sup> The division apparently takes the position that if it were to request any information from an applicant whose application had been approved, that person's application would then become "incomplete." Thus, if it turned out that the person had moved away from Alaska in the intervening time, the person would be ineligible for that dividend and would have to pay it back. This would be true even if the person had actually remained an Alaska resident for a year or two after the dividend had been paid. This interpretation of the regulation means that, theoretically, the division could send letters to all PFD recipients two and half years after they receive their dividends and inquire whether the recipients are still living in the state; all those who had moved in the intervening period would have to return their dividends.

This interpretation of 15 A A C 23.993(b) exceeds the reasonable scope of the regulation. The regulation defines a term used in AS 43.23.005(a), which requires a person to be a resident all

<sup>2</sup> AS 43.23.035.

through the qualifying year and at the "date of application." The point of the statute is to expand the period during which an applicant must be a state resident so that applicants who have already moved from Alaska or decided to move from Alaska will not be paid dividends, even though they were residents all through the qualifying year. Nothing about the statute indicates that is intended to recover dividends from people who decide to move away from Alaska after the dividends have been applied for in good faith, approved and paid.

The regulation clearly covers the situation where an applicant applies, but does not include all of the information that the division needs to make a decision. If the applicant has forgotten to include a signature or required supplemental information, it makes sense to consider the application incomplete. If the applicant provides all required information, but something in the information supplied compels the division to make further inquiries or investigations, the division may request additional information under 15 A A C 23.173(b). If the applicant does not provide this information within thirty days, the division will deny the application.<sup>3</sup> If the applicant has in good faith supplied all required information and the division decides to grant the application, the decision stands as a determination by the division that all required information has been provided and the application is complete. To read the regulations otherwise would mean that the division routinely makes decisions and takes action on incomplete applications, an untenable situation.

This interpretation of the regulation does not mean that the division is prohibited from reopening a case and later denying an application it has previously granted. It does happen that the division sometimes learns that it has paid dividends to applicants who were not eligible, even applicants who believed in good faith they were eligible when they applied. But in such a case, it must be shown that the applicant was ineligible when the applicant supplied the last required bit of information before the division decided it had enough information to make a decision. People who become ineligible after this point are not required to pay back their dividends, even if the division sends them a letter asking for more information about the application it has already granted.

Although they had given some thought to the prospect of moving out of state if a good opportunity arose, the D.'s were eligible for 2007 dividends on January 4, 2007. They submitted their applications on that day, and supplied all information requested on the application form truthfully and correctly. The division determined that the D.'s were eligible based on the information supplied, and did not require anything further before making a decision to grant the

<sup>3</sup> 15 A A C 23.173(d).

applications. The D.'s applications were complete for all purposes on January 4, 2007. The information that the division later received about the D.'s provided a reasonable basis to investigate the D.'s status at their date of application and to request further information. But the division's act of doing so did not convert an application that had previously been determined "complete" to an application that is "incomplete."

#### **IV. Conclusion**

Although the division received information raising possible concerns regarding the eligibility of the D.'s for 2007 dividends after their applications were granted, the evidence shows that the D.'s were in fact eligible for 2007 dividends at their date of application. Their applications 2007 permanent fund dividends should be granted.

DATED this 24th day of March, 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 18th day of April, 2008.

By: Dale Whitney  
Administrative Law Judge

The undersigned certifies that  
this date an exact copy of the  
foregoing was provided to the  
following individuals:  
PFD Division  
4/18/08