

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

In the Matter of)	
)	
B. J. H.)	
)	OAH No. 08-0075-PFD
<u>2006 Permanent Fund Dividend</u>)	Agency No. 20060563529

DECISION & ORDER

I. Introduction

B. J. H., now a resident of Colorado, received a 2006 permanent fund dividend (PFD). The Permanent Fund Dividend Division subsequently concluded that she was ineligible because she did not meet the definition of Alaska resident at the time of her application, and it assessed the dividend for repayment. Ms. H. requested a formal hearing by correspondence.

The division’s denial and assessment of Ms. H.’s application is affirmed because the evidence shows that she did not have the “intent to remain” necessary to be an Alaska resident when she applied for the dividend. This circumstance disqualifies her from eligibility. Although the department has discretion to refrain from assessing a wrongly-paid dividend, no special circumstances favor exercising that discretion in this case.

II. Facts

Ms. H. lived in Alaska from early 1994 through the end of 2005.¹ On January 19, 2006, she had her household belongings picked up for shipment to Colorado.² On January 27 or later, she signed and submitted a 2006 PFD application.³ On the application, she certified that “I am now and intend to remain an Alaska resident indefinitely.”⁴ On January 28, 2006, she left the state permanently.⁵ She has resided in Colorado Springs, Colorado since February of 2006.⁶

This formal appeal commenced on February 5, 2008. Ms. H. submitted a number of documents with her formal appeal request. By notice dated February 20, 2008, Ms. H. and the division were given until March 20, 2008 to send any additional documents or correspondence

¹ Exhibit 4, p. 3 (2006 Adult Supplemental Schedule).

² Exhibit 4, p. 6 (Bill of Lading).

³ Exhibit 1, p. 1 (2006 Adult Application). The application is dated January 27, 2006. The division asserts that it did not receive the application until March 31, 2006, although there appears to be no evidence in the record regarding the date of receipt.

⁴ Exhibit 1, p. 1 (2006 Adult Application).

⁵ Exhibit 4, p. 3 (2006 Adult Supplemental Schedule).

for consideration in this appeal. Both were given until March 30, 2008 to respond to any documents received from the other. The division filed a position statement. Ms. H. filed nothing further.

III. Discussion

To be eligible for a dividend, an individual must be “a state resident on the date of application.”⁷ To be a state resident, a person must have “the intent to remain in the state indefinitely and to make a home in the state.”⁸

When Ms. H. applied for a 2006 dividend, she had already shipped her household goods to Colorado as part of a permanent move to that state. Her certification that she had the intent “to remain an Alaska resident indefinitely” was incorrect. Because she lacked that intent, she had already lost her status as an Alaska resident, and she was not eligible for a dividend.

Assessment of a PFD that has already been paid, but paid in error, is a matter of discretion. Alaska Statute 43.23.035(b) provides that if the commissioner determines that a dividend should not have been paid, he “may” recover the payment. Likewise, 15 AAC 23.233(a) permits the department “in its discretion” to elect to take steps to recover a dividend paid to an individual who was not eligible. While in many cases it will be good policy to recover dividends that have been paid in error, the department is never compelled by law to do so.

The Department has previously declined to assess erroneously-paid dividends when there are special circumstances that make it inequitable to seek repayment, such as where the legal grounds for denying the dividend are debatable or where the applicant could not have known at the time of application that he or she was ineligible.⁹ This case presents no such circumstances. Ms. H. should have known when she applied that she was not eligible, and she should not have certified, contrary to fact, that she intended to remain in Alaska.

⁶ Exhibit 4, p. 4 (2006 Adult Supplemental Schedule).

⁷ Alaska Statute 43.23.005(a)(2).

⁸ Alaska Statute 01.10.055. Residency can continue when an individual is absent from the state, but the intent to remain a resident must continue. *Id.*

⁹ See *In re R.E.*, OAH No. 06-0385-PFD (2006).

IV. Conclusion and Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny and assess the 2006 permanent fund dividend of B. J. H. is AFFIRMED.

DATED this 2nd day of April, 2008.

By: Signed
Christopher Kennedy
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of April, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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