

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

IN THE MATTER OF
H. and R. M.

Case No. OAH 08-0125-PFD

2007 Permanent Fund Dividend

DECISION

I. Introduction

H. and R. M. timely applied for 2007 permanent fund dividends. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Mr. and Ms. M. requested a formal hearing by written correspondence, and presented documentary evidence and written argument. Careful review of the entire written record and due deliberation support the conclusion that the applicants are not eligible for 2007 dividends, even though they may have been Alaska residents at all times.

II. Facts

The facts in this case are not in dispute. Mr. M. is a civilian employee of the Department of Defense. In 2002 Mr. M. was working as a cost analyst, and he was transferred from Honolulu to Elmendorf Air Force Base. Upon their arrival in Alaska, Mr. and Ms. M. registered to vote in Alaska and obtained Alaska driver's licenses. They initially rented an apartment, but soon bought a house in Anchorage, which they still own.

After two years in Alaska, the applicants decided to apply for a position with the Department of Defense Dependent Schools in Okinawa. Mr. M. was offered this job and he accepted it, but with the understanding that his previous job with the Corps of Engineers would be held for him for five years. He is thus expected to report back to duty in Alaska during October of 2009. The Department of Defense paid to ship only minimal belongings to Okinawa, and the M.'s put most of their belongings into storage and rented out their Anchorage house. They left Alaska October 13, 2004. Mr. and Ms. M. have made return visits to Alaska each year since leaving.

III. Discussion

There are a number of eligibility criteria a person must meet in order to qualify for a permanent fund dividend.¹ Among these are the requirements that the applicant be an Alaska resident during the qualifying year and at the date of application. The division has not challenged the applicants' assertions that they have remained Alaska residents at all times, and there is nothing in the record to suggest that the applicants have not maintained the intent to return to Alaska to remain indefinitely and make their home. Their Alaska residency is not an issue in this case.

Another eligibility criterion is contained in AS 43.23.005(a)(6): "An individual is eligible to receive one permanent fund dividend each year...if the individual...was, at all times during the qualifying year, physically present in Alaska or, if absent, was absent only as allowed by AS 43.23.008...." The qualifying year for a 2007 dividend was 2006. Because the applicants were not physically present in Alaska all through 2006, it is necessary to determine whether their absence was for one of the reasons listed in AS 43.23.008.

There are a number of reasons listed in AS 43.23.008 that a person can be absent from Alaska and still qualify for a permanent fund dividend. These include absences for reasons such as education, medical treatment, service to the state in a field office, congressional service, and military service. Also, applicants may be absent from the state for any reason consistent with Alaska residency for up to 180 days during the qualifying year, or for 120 days in addition to time devoted to certain educational pursuits, or 45 days in addition to absences for various other reasons.⁴

There is no dispute that, although Mr. M. is employed by the Department of Defense, he is a civilian and is not "serving on active duty as a member of the armed forces of the United States." Therefore, his absence is not allowable under the provision of AS 43.23.008(a)(3) for military service, and Ms. M.'s absence is not allowable as a spouse accompanying an active duty member of the military.

There appears to be no dispute that, although they remain Alaska residents, Mr. and Ms. M. were absent from Alaska for more than 180 days during 2006, the qualifying year for a 2007 dividend. Mr. and Ms. M. argue that their applications for 2005 dividends were granted after a decision to deny those applications was overturned, and that their 2007 applications should

¹ AS 43.23.005(a).

² AS 43.23.005(a)(2)-(3).

³ AS 43.23.008(a).

⁴ AS 43.23.008(a)(16).

be granted for the same reason (the M.'s forgot to apply for 2006 dividends). The record does not contain evidence regarding the 2005 dividends, except for notices from the division advising the M.'s that he informal conference decision to deny their applications had been overturned.

The division's explanation regarding the 2005 applications explains the difference between the two situations. According to the division, it had initially determined that the M.'s had severed their Alaska residency when they left Alaska in October of 2004, and it denied their applications initially for that reason. Upon finding that Mr. and Ms. M.'s intended to return to Alaska, the division granted their applications. In 2004, the qualifying year for 2005 dividends, the M.'s absence was allowable, because it was for a period of less than 180 days in 2004 and was consistent with the intent to return to Alaska to remain indefinitely. In 2006, the absence was consistent with continuing Alaska residency, but because it was more than 180 days in 2006, and was not for any other specifically allowable reason, the absence was not allowable.

IV. Conclusion

Mr. and Ms. M. were not physically present in Alaska all through the qualifying year, and they were not absent as allowed by AS 43.23.008. The division's decision to deny the applications of H.M. and R.M. for 2007 permanent fund dividends is affirmed.

DATED this 30th day of April, 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 29th day of May, 2008.

By: Dale Whitney

Administrative Law Judge

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
5/29/08