

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

In the Matter of)	
P. L. H.)	
)	OAH No. 08-0291-PFD
<u>2007 Permanent Fund Dividend</u>)	Agency No. 2007-039-0910

DECISION & ORDER

I. Introduction

P. L. H. timely applied for a 2007 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that she was not eligible, and it denied the application initially and at the informal appeal level.¹ Mrs. H. requested a formal hearing by telephone² which was held on July 21, 2008. Mr. and Mrs. H. participated by telephone. Kimberly Colby participated on behalf of the Division. Exhibits 1 through 18 were admitted into evidence. The hearing was recorded.

The Division's denial of Mrs. H.'s application is AFFIRMED because Mrs. H. failed to establish that she was eligible for a 2007 PFD.

II. Facts

Mrs. H. was a military spouse at all times pertinent to this case. Mr. H. is an officer in the United State Army. He deployed for a one year combat tour in Iraq in 2005; his tour was extended. In June of 2006, Mr. H. received new assignment instructions; he was reassigned to Washington, D.C. Mrs. H. and her children prepared to relocate while her husband remained in Iraq. They moved from base housing into temporary housing at Ft. Wainwright, Alaska. Due to the uncertainty of when Mr. H. would report for duty in Washington, D.C., the H.s elected to send their household goods to property in Missouri that they had purchased in 2005 (or possibly 2006). The Missouri property was initially purchased for use by Mrs. H.'s mother, but the expected use by her mother did not materialize.³

Mrs. H. enrolled her children in school in August or September of 2006 in conjunction with moving to Missouri. Mr. H. did not return to the United States until December, 2006.

¹ Exhibits 6 and 9, respectively.

² Exhibit 10, pp. 1-4.

³ Exhibit 10, pp. 3-4, and Mrs. H.'s testimony at the hearing.

Mrs. H. electronically signed and submitted her 2007 Online PFD Application (application) on February 8, 2007.⁴ She answered “yes” to the question “Are you physically in Alaska today?” and “no” to the questions “In 2006, were you gone from Alaska more than 90 days total?” and “In 2006, were you gone from Alaska more than 180 days total?”⁵

PFD Fraud Investigation Section (Investigations) mailed Mrs. H. a notice to her Ft. Wainwright, Alaska address, on June 21, 2007.⁶ Investigations inquired why she answered that she was in Alaska when she filed her application when her online application was received from a computer server located outside of Alaska.⁷ Mrs. H. responded by mail on July 9, 2007 from Springfield, Missouri.⁸ She indicated that, at the time she filed the online application, her husband had recently returned from deployment to Iraq and her family was “on R&R and visiting family.”⁹

Mrs. H. completed a 2007 Adult Supplemental Schedule on June 28, 2007 and stated that she departed from Alaska on February 1, 2007 and intended to return to Alaska on March 1, 2008 and remain indefinitely.¹⁰ Investigations determined that Mrs. H. had been using a Missouri mailing address since at least August of 2006.¹¹ A *Quova* internet protocol search was printed on August 9, 2007 and indicated that Mrs. H. filed her online 2007 PFD application from or near M. V., Missouri.¹²

Mrs. H. filed her request of informal appeal on August 29, 2007.¹³ She and her children are military dependents that lived in Alaska since 2001.¹⁴ She asserted that she had reviewed the information concerning residency establishment for a military spouse. She holds an Alaska drivers license. She is registered to vote in Alaska. Her family vehicles are registered in Alaska. She planned to return to Alaska at least every two years.¹⁵

⁴ Exhibit 1.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 2. Successful online applications are examined to identify the Remote Host Internet Protocol (IP Address) of the computer used to file the application.

⁸ Exhibit 3.

⁹ Exhibit 3, p. 1.

¹⁰ Exhibit 3, p. 2.

¹¹ Exhibit 4, p. 1. Investigations conducts address searches using *Accurint*, a locate-and-search tool available to government, law enforcement and commercial customers.

¹² Exhibit 4, p. 4.

¹³ Exhibit 6.

¹⁴ Exhibit 6, p. 3.

¹⁵ Exhibit 6, p. 2.

III. Discussion

A. Residency

The definition of state resident as it applies to the Alaska Permanent Fund dividend program is set out in AS 43.23.095:

(7) “state resident” means an individual who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055, or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of AS 01.10.055[.]

AS 01.10.055 states:

(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.

(b) A person demonstrates the intent required under (a) of this section by maintaining a principal; place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside 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.

The evidence is clear and un rebutted that at the time Mrs. H. filed her PFD application on February 8, 2007, she (and her children) had already moved to Missouri, a factual circumstance that is inconsistent with the intent required under AS 01.10.055(a) to maintain residency in Alaska.

Mrs. H.’s testimony reveals that she did not wish to move from Alaska and during the time she was in Missouri, she and her family hoped to return to Alaska. Other than hoping to return to Alaska in 2008, or when her husband retired from military service, she had no specific plan and no definite or determinable date on which she would return.

The evidence clearly demonstrates that 2006 was a tumultuous, confusing, and stressful year for Mrs. H. and her family. While this is unfortunate, several reason exist which do not

allow her to receive a 2007 PFD.¹⁶ Because Mrs. H.'s children did not have an eligible sponsor, they are also denied the 2007 PFD.¹⁷

Individuals who are spouses or dependents of active duty military members deployed overseas must remain at the military member's duty station before deployment, accompany the military member to an overseas location (if allowable), move to the military member's follow-on duty station (if known at the time of deployment), or remain in Alaska, *if* they wish to remain eligible for the PFD.¹⁸ Perhaps it was a genuine mistake, but Mrs. H. elected to move herself and her children and all of their household goods to Missouri while Mr. H. was deployed, instead of remaining in Alaska or moving to Washington, D.C. Because Mrs. H. did not remain in Alaska or move to Washington, D.C., her absence (and the children's absence) from Alaska during the qualifying year (2006) are considered "vacation" or "other" absence. Individuals who are absent for "vacation" or "other" reasons are required to maintain their principal home in Alaska or store their household goods in Alaska for the duration of the absence, regardless of whether the absence is a few days or more than one hundred eighty days. The move to Missouri with all of their household goods in the qualifying year, enrolling the children in Missouri schools, are facts which sever the requisite ties to Alaska that are necessary to receive a PFD.

IV. Conclusion

Mrs. H. failed to establish that she was eligible for the 2007 dividend. Nothing in this decision precludes her from reestablishing her Alaska resident status and thus becoming eligible for future PFDs.

¹⁶ The Division has raised multiple reasons why Mrs. H. may not receive the 2007 PFD. Not all reasons will be discussed in this decision as they are cumulative. This decision is based upon the principal facts and the law applied to these facts.

¹⁷ 15 AAC 23.113(b).

¹⁸ AS 43.23.008(a)(3).

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of P. L. H. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 7th day of January, 2009.

By: Signed
James T. Stanley
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 3rd day of February, 2009.

By: Signed
Signature
James T. Stanley
Name
Administrative Law Judge
Title

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