

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

In the Matter of :	)	
	)	
C. M.,	)	
a minor.	)	OAH No. 08-0398-PFD
<u>2007 Alaska Permanent Fund dividend</u>	)	DOR No. 2007-059-8649

**DECISION and ORDER**

**I. Introduction**

B. M. filed a timely application for a 2007 Alaska Permanent Fund dividend for her minor child, C. M. The Permanent Fund Dividend Division (Division) denied the application on the ground that Ms. M. had failed to timely provide requested information. Ms. M. filed an appeal. On appeal the Division argues that C. M. is disqualified on an additional ground: that she became a Montana resident in late February, 2007.

Ms. M.'s appeal was referred to the Office of Administrative Hearings, and the assigned administrative law judge conducted a hearing October 22, 2008. B. M. participated, and Susan Pollard represented the Division. At the hearing, no testimony was taken; Ms. M. and the Division agreed to submit the case for decision on the record.

Because the preponderance of the evidence in the record establishes that C. M. remained an Alaska resident while living in another state, and she did not take a disqualifying action during the application period, the Division's decision is reversed.

**II. Facts**

B. M. is an Alaska resident who lives in Anchorage. Her daughter, C., was born in Livingston, Montana in 1995.<sup>1</sup> C. moved to Alaska with her mother in 2001.<sup>2</sup>

In 2006, B. M. was convicted of a felony.<sup>3</sup> That fall, C. entered the sixth grade at Ptarmigan Elementary School in Anchorage.<sup>4</sup> Late in 2006, facing imprisonment, B. M. decided to send her daughter to temporarily live with B.'s parents in Livingston, with the intent that C. would return after one year.<sup>5</sup> In January, 2007, C. moved in with her grandparents and enrolled

---

<sup>1</sup> Ex. 3, p. 3.  
<sup>2</sup> Ex. 3, p. 4.  
<sup>3</sup> Position Statement at 1.  
<sup>4</sup> Position Statement at 2.  
<sup>5</sup> Position Statement at 2.

as a sixth grader in the Livingston [Montana] Public School District. Under Montana state law, a student who does not reside in the school district in which the student is enrolled must pay tuition.<sup>6</sup> In order to avoid paying tuition, B. arranged for her parents to obtain a Montana court order designating them as C.'s temporary co-guardians and co-conservators, effective February 26, 2007.<sup>7</sup>

C. completed sixth grade in the spring of 2007 and, as her mother had planned before C. left Alaska, she entered seventh grade in Livingston that fall. At some point while C. was attending school in Montana, B. M. decided that C. should stay in Montana for the remainder of the 2007-2008 school year.<sup>8</sup> During the summer of 2008, after the school year had ended, C. came to Alaska and spent time with her mother.<sup>9</sup> She returned to Montana and entered eighth grade there in the fall of 2008.<sup>10</sup>

### **III. Discussion**

The Division's position statement asserts that C. is ineligible for the 2007 dividend because: (1) her sponsor failed to provide requested information in a timely manner; (2) C. moved out of state in January, 2007; and (3) C. has been a resident of Montana since February, 2007.

#### **(1) Failure to Provide Requested Information**

15 AAC 23.173(d) provides that if an applicant has not timely provided all information requested by the department within the time limit set by 15 AAC 23.173(c), the application will be denied. Thus, the Division correctly denied B. M.'s initial application. However, 15 AAC 23.173(c) specifically provides that information provided after the time limit "may be considered on subsequent appeal." Thus, the failure to provide requested information is not a valid ground for denial if the information is provided on appeal, either at an informal conference<sup>11</sup> or later in a formal appeal. In this case, B. M. provided additional information in direct contacts with Division personnel prior to the formal hearing. She appeared at the formal hearing and the Division consented to a decision on the written record. Ms. M.'s failure to provide requested

---

<sup>6</sup> See MCA 20-5-101(12) ("The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.").

<sup>7</sup> Position Statement at 2; Ex. 8.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Position Statement at 2.

<sup>10</sup> Position Statement at 2.

<sup>11</sup> See 15 AAC 23.173(j).

information at an earlier stage of the proceedings is no longer a valid ground for denial of her dividend.

(2) Move Out of State

15 AAC 23.143(d)(10) provides that an individual is ineligible who, during the application period, (a) moved from Alaska for a specified reason and (b) claimed moving expenses as a deduction for federal income tax purposes.

There is no evidence that B. M. claimed C.'s moving expenses as a federal income tax deduction. Although C. moved out of Alaska, that fact does not in itself render her ineligible.

(3) Residence

AS 01.10.055 establishes the statutory test for establishing and severing residence in Alaska for purposes of the Alaska Permanent Fund dividend program.<sup>12</sup> 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.

...

(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.

Under AS 01.10.055(c), a person who lives in another state severs residency if the person: (1) establishes residency in the state; (2) claims residency in the state; or (3) performs other acts or is absent under circumstances that are inconsistent with the intent to remain a resident of Alaska.

a. *C. M. Did Not Establish Residency in Montana*

The term "establishes residency" is given a definite and precise meaning in AS 01.10.055(a): presence in Alaska with the intent to remain indefinitely and to make a home in the state. Under the doctrine of statutory construction *in pari materia*, a word or phrase used in one subsection of a statute is generally given the same meaning when repeated elsewhere in another subsection of the same statute.<sup>13</sup> Thus, under AS 01.10.055(c), to sever residency in Alaska by

---

<sup>12</sup> See AS 43.23.095(7).

<sup>13</sup> See, e.g., Keane v. Local Boundary Commission, 893 P.2d 1239, 1247 (Alaska 1995); State v. Bingaman, 991 P.2d 227, 229 n. 6 (Alaska App. 1999); Anderson v. Municipality of Anchorage, 645 P.2d 205, 210-211 (Alaska App. 1982); Commissioner of Internal Revenue v. Estate of Ridgway, 291 F.2d 357 (3<sup>rd</sup> Cir. 1961).

establishing residency in another state, a person must be in the other state with the intent to remain indefinitely and make a home in the state. In this case, the preponderance of the evidence is that when she left Alaska in January, 2007, neither C. nor her mother intended for C. to remain in Montana indefinitely. Rather, they intended for her to return to Alaska at a definite time (after one year) and to resume living with her mother. The preponderance of the evidence is that at least through February 26, 2008 (six months after the dividend was denied and nearly one full year after the application period had ended), they maintained the intent for C. to return at a definite time (the end of the 2007-2008 school year) and to resume living with her mother.<sup>14</sup> The record indicates that at the time of the informal conference decision dated July 7, 2008, was issued, C. had, consistent with that intent, returned to Alaska and was living with her mother. Because both C. and her mother intended for her to return to Alaska at a definite time throughout the time the application was being considered by the Division, C. did not “establish residency” in Montana within the meaning of AS 01.10.055(a), and therefore she did not sever her Alaska residency under the first method identified in AS 01.10.055(c).

*b. C. M. Did Not Claim Residency in Montana*

The Division has not pointed to any specific act by which C. may be said to have claimed residence in Montana. The Division points out that C. does not pay non-resident tuition to attend school in the Livingston Public School District. However, the provisions of Montana law governing non-resident tuition appear to be aimed at the student’s place of residence within Montana, not on the student’s status as a Montana resident.<sup>15</sup> Furthermore, in order to avoid paying tuition, C. did not “claim residence” in Montana: she simply obtained a legal guardian who resides in the school district. Under Montana law, the residence of an unmarried minor is the residence of the parent having legal custody,<sup>16</sup> and “cannot be changed by either the minor’s own act or that of the minor’s guardian.”<sup>17</sup> B. M. remains C.’s legal custodian, and under Montana law C. remains a resident of Alaska. C. avoids tuition because she lives with a legal guardian who resides in the school district, not because she is a Montana resident. C. has not claimed to be a resident of Montana.

*c. The Circumstances Are Consistent With Alaska Residency*

---

<sup>14</sup> Ex. 4.  
<sup>15</sup> See MCA 20-5-101(1).  
<sup>16</sup> MCA 1-1-215(4)(b).

The Division argues that the circumstances are inconsistent with Alaska residency, referencing 15 AAC 23.143(d)(11), 15 AAC 13.243(h), and 15 AAC 23.163(d).<sup>18</sup>

15 AAC 23.143(d)(11) provides that an individual who accepts admission to an out of state college or university under resident tuition is ineligible. But as the Division acknowledges, this regulation does not apply to tuition paid to attend primary school. Furthermore, as previously noted, a “resident” for primary school tuition purposes is a child who lives in the school district with a parent or legal guardian, whether or not the child has the status of a Montana resident. Finally, 15 AAC 23.143(d)(11) restricts eligibility for a particular dividend, but does not define residency.

15 AAC 23.143(h) provides that an individual who on the date of application plans on “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 indefinitely in Alaska and is not eligible for a dividend.” On March 28, 2007, when C.’s application was filed, she was already in Montana, and thus the regulation does not apply. More fundamentally, C. did not “move” within the meaning of subsection (h): she temporarily relocated for a definite time. The regulation targets individuals who plan to “move” in the sense of leaving Alaska with no definite plan to return. Plainly, not every person who leaves Alaska for a reason other than one listed in AS 43.23.008(a) has relinquished the intent to return at a definite time, and 15 AAC 23.143(h) cannot reasonably be construed to mean that all such persons have severed their Alaska residency.

15 AAC 23.163(d) provides that a child who lives with an ineligible parent or guardian while attending an out-of-state institution “has not demonstrated that the primary reason for the individual’s absence is to obtain a secondary education.” This regulation addresses allowable absences, and it therefore has no bearing on C.’s situation. In any event, the regulation applies only to absences for attendance at a secondary school, and for purposes of the 2007 dividend, C.’s absence was to attend a primary school.

In this particular case, B. M. was a single parent facing imprisonment on felony charges when she sent her daughter off to live with her parents for a year, which was subsequently extended to the end of the school year. Under such circumstances, C.’s relocation to Montana is

---

<sup>17</sup> MCA 1-1-215(6).

<sup>18</sup> Position Statement at 3, note 9; 4, notes 10, 11.

not inconsistent with Alaska residency. Nothing in the cited regulations mandates a contrary result.

**IV. Conclusion**

C. M. did not sever her Alaska residency when she went to live with her grandparents. She did not engage in a disqualifying act during the application period. She is eligible for the 2007 dividend.

**V. Order**

1. The division's denial of the application of C. M. for a 2007 Alaska Permanent Fund dividend is REVERSED.

DATED November 24, 2008

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
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 29<sup>th</sup> day of December, 2008.

By: *Signed* \_\_\_\_\_  
Signature  
Andrew M. Hemenway  
Name  
Administrative Law Judge  
Title

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