

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

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| In the Matter of                    | ) |                          |
|                                     | ) |                          |
| D. N.                               | ) |                          |
|                                     | ) | OAH No. 08-0563-PFD      |
| <u>2007 Permanent Fund Dividend</u> | ) | Agency No. 2007-057-7412 |

**DECISION & ORDER**

**I. Introduction**

D. N. timely applied for a 2007 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied her application initially and at the informal appeal level because the division determined that Ms. N. took actions inconsistent with maintaining her Alaska residency. She requested a formal hearing which was held on November 18, 2008. Ms. N. did not participate in the hearing or otherwise supplement the record on appeal.<sup>1</sup> The preponderance of the evidence establishes that Ms. N. did not sever her Alaska residency but that she did maintain her principal home in another state while absent from Alaska for a disqualifying reason. She is, therefore, ineligible for the 2007 PFD. The division's decision is affirmed.

**II. Facts**

Ms. N. has lived in Alaska since 2001.<sup>2</sup> On September 14, 2006, Ms. N. traveled from Alaska to Kansas. She could not afford to keep a residence in Alaska during her absence.<sup>3</sup> The few items she did own, she took with her. Upon arriving in Kansas, Ms. N. stayed with a friend and then rented a house for a short period of time before returning to Alaska. While in Kansas she purchased a vehicle, registering the vehicle in Kansas and obtaining a Kansas driver's license. Although not originally identified as such on her PFD application, Ms. N. later clarified that the purpose of her trip was to testify at a parole hearing against a man who had caused her injury.<sup>4</sup>

---

<sup>1</sup> "If a person requests a hearing and fails to appear at the hearing, the [Administrative Law Judge] may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j). Ms. N. failed to appear at the hearing. Before the hearing commenced, Ms. N. was called at the phone number of record. No one answered but a message was left on the answering device instructing Ms. N. that the record would remain open for 10 days. The record closed without further participation from Ms. N.

<sup>2</sup> Exhibit 7 at 3.

<sup>3</sup> Exhibit 3 at 3; Exhibit 5 at 2 – 4.

<sup>4</sup> *Id.*

On March 31, 2007, while in Kansas, Ms. N. filled out her 2007 PFD application online. Under “absences” Ms. N. indicated that she departed Alaska September 14, 2006 and would be returning May 16, 2007.<sup>5</sup> In the space provided to explain the purpose of the absence she responded “[n]ever listen to other people. Mistake. AK is home.”<sup>6</sup> Ms. N. also completed the 2007 Adult Supplemental Schedule. On this form she answered “yes” when asked if her principal home was in Alaska. However, on this same form Ms. N. gave her Kansas address as her home or storage physical address and as her principal home address.<sup>7</sup> She also stated that she would be returning to Alaska on May 16, 2007. Ms. N. returned to Alaska on May 17, 2007, as evidenced by her boarding pass.<sup>8</sup>

In an email to the division dated October 17, 2007, Ms. N. explained that she:  
never intended to reside in Kansas, Alaska is home. I have family close in Colorado, and the man who caused my (official) disability is doing life in prison in Colorado for that, within driving distance from where I was staying with a friend in Hays, Ks. It was important to appear at his parole hearing, and I flew back here 2 days after that previously scheduled date. All this can be verified.

I failed to factor in that this length of stay might invalidate me for my PFD. (I am disabled...not physically.) Again, Alaska was and is home. I am very low income, and have very few possessions, so storage was not an issue. I took stuff with, I brought it back....My flight was a gift.<sup>9</sup>

On October 24, 2007, the division issued its initial denial, finding that Ms. N. identified Kansas as her principal place of residence on her supplemental schedule.<sup>10</sup> The division also found compelling the fact that Ms. N. registered a vehicle in Kansas and that when her Alaska driver’s license expired on November 1, 2006, rather than renew her Alaska license, Ms. N. obtained a Kansas license. The division concluded that these actions were inconsistent with maintaining Alaska residency.<sup>11</sup> Ms. N. did not surrender her Kansas driver’s license or re-register a vehicle in Alaska until June 13, 2007.<sup>12</sup>

Ms. N. informally appealed the division’s initial denial. As evidence of her commitment to return to Alaska Ms. N. offered that the Colorado Department of Corrections rescheduled the

---

<sup>5</sup> Exhibit 1 at 2.

<sup>6</sup> *Id.*

<sup>7</sup> Exhibit 1 at 3.

<sup>8</sup> Exhibit 3 at 2.

<sup>9</sup> Exhibit 3 at 3 (emphasis in original).

<sup>10</sup> Exhibit 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1.

parole hearing to a later date and rather than stay and testify, she returned to Alaska as represented on her supplemental schedule. Ms. N. disputes that she established residency in Kansas. She explained that she was required to obtain a Kansas driver's license after she purchased a vehicle and sought to have it registered in Kansas, not because her Alaska license expired. Finally, Ms. N. offers that she has had the same account at the same Alaska credit union since November 2001.<sup>13</sup>

The division contacted one of Ms. N.'s verifiers and represents that the verifier knew Ms. N., but was unaware that she had left the state.<sup>14</sup> The division denied Ms. N.'s informal appeal finding again finding that Ms. N. maintained her principal home in Kansas, had a Kansas driver's license and registered a vehicle in Kansas -- all actions the division believed to be inconsistent with maintaining an Alaska residency while absent from the State.

### **III. Discussion**

The division contends that Ms. N. is ineligible for the 2007 PFD because she (1) is not a state resident as defined by law and (2) engaged in a disqualifying action by maintaining her principal home in Kansas. Ms. N. has the burden of proving that that her absence was temporary, her principal home is in Alaska, and she has always intended to remain in Alaska indefinitely.<sup>15</sup>

#### **A. Residency**

It is undisputed that Ms. N., prior to leaving Alaska in September 2006, had established residency for PFD purposes. The definition of state resident as it applies to the Alaska Permanent Fund dividend program is set out in AS 43.23.095(7). For purposes of the PFD program, a person is a state resident if he or she is "physically present in the state with the intent to remain indefinitely" or, if not physically present, the person "intends to return to the state to remain indefinitely under the requirements of AS 01.10.055." AS 01.10.055 provides in a case such as this, that once a person has established residency, that person remains a resident during an absence unless the person (1) "establishes or claims residency in another state" or (2) "performs other acts or is absent under circumstances that are inconsistent with intent [to remain in the state indefinitely]."<sup>16</sup>

---

<sup>13</sup> Exhibit 5 at 2.

<sup>14</sup> November 4, 2008 Division Formal Hearing Position Statement at 3.

<sup>15</sup> 15 AAC 05.030(h).

<sup>16</sup> AS 01.10.055(a), (c).

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. Thus, under AS 01.10.055(c), for Ms. N. to establish residency in another state, she must be physically present in that other state with the intent to remain indefinitely.

Ms. N.’s statements in support of her appeal and her return to Alaska, reveal that, more likely than not, Ms. N. did not intend to remain in Kansas indefinitely. Ms. N. had a definite and determinable date to return to Alaska, May 16, 2007, and did in fact return as planned.<sup>17</sup> Therefore, while she was physically present in Kansas, she did not intend to remain in Kansas indefinitely. Thus, Ms. N. did not sever her Alaska residency.

## 2. Disqualifying Acts.

To be eligible for a PFD, in addition to establishing Alaska residency, an applicant must meet certain requirements. The Department has promulgated regulations to assist the division in assessing eligibility of an applicant.<sup>18</sup> One such regulation, 15 AAC 23.143(d), identifies 17 disqualifying acts. Maintaining a “principal home in another state..., except while absent for a reason listed (A) in AS 43.23.008(a)(1)-(3) or (9) – (11)...” is a disqualifying act<sup>19</sup> The disqualification occurs if the disqualifying action is taken at any time beginning January 1 of the qualifying year (in this case, 2006) through the date the application is complete.<sup>20</sup>

Beginning September 15, 2006<sup>21</sup> through May 17, 2007, Ms. N. was not physically present in Alaska. She left no belongings in Alaska because she had so few. Everything she had she took with her. Because Ms. N. failed to appear at her hearing, she could not be questioned. Questioning may have established that it was more likely than not that Ms. N. maintained her principal home in Alaska even though she left no physical belongings behind. Based on the

---

<sup>17</sup> Ms. N.’s actual date of return was May 17, 2007. Exhibit 3 at 2.

<sup>18</sup> The Alaska Supreme Court has upheld regulations restricting eligibility for a PFD beyond the specific statutory requirements of AS 43.23.005(a) and AS 43.23.008. See *Church v. State, Dept. of Revenue*, 973 P.2d 1125 (Alaska 1999); *Brodigan v. Alaska Dept. of Revenue*, 900 P.2d 728 (Alaska 1995); *State, Dept. of Revenue, PFD Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *State, Dept. of Revenue, PFD Division v. Cosio*, 858 P.2d 621 (Alaska 1993).

<sup>19</sup> 15 AAC 143(d)(1).

<sup>20</sup> An application is considered to be “complete” when the division receives all the information required by AS 43.23 *et. seq.*, and applicable regulations, including supplemental or additional information requested by the division under 15 AAC 23.173.

<sup>21</sup> Ms. N. left Alaska on September 14, 2006, the division considers the day and individual leaves Alaska as a day the individual was in Alaska. 15 AAC 23.163(j).

evidence contained in the written record, however, it is more likely than not that Ms. N.'s "principal home" during the time in question was where ever she happened to be. Her presence in Kansas was not transient as evidenced by the short period of time when she rented an apartment. Therefore, under 15 AAC 23.143(d)(1) she is disqualified from eligibility for the 2007 PFD unless absent for a reason listed in AS 43.23.008(a)(1)-(3) or (9)-(11).

None of the referenced subsections apply to Ms. N.'s situation. She was not a full time student; therefore neither AS 43.23.008(a)(1) or (2) applies. She was not on active duty in the military, and thus AS 43.23.008(a)(3) does not apply. Finally she was not an elected official or the elected official's staff, or a state employee, and thus AS 43.23.008(9)(11) do not apply. Because Ms. N. maintained her principal home in Kansas from September 2006 through her date of return to Alaska, May 17, 2007, she is ineligible to receive a 2007 PFD under 15 AAC 23.143(d)(1).

#### **IV. Conclusion**

It is uncontested that Ms. N. was an Alaska resident prior to January 1, 2006. The preponderance of the evidence is that through the date her application was complete, Ms. N. maintained the intent to return to Alaska and remain indefinitely. However, the preponderance of the evidence is that Ms. N. is ineligible for a 2007 PFD because she maintained her principal home in another state, Kansas, during the qualifying period, in violation of 15 AAC 23.143(d)(1). This decision does not affect her status as an Alaska resident.

#### **V. Decision**

The decision of the Permanent Fund Dividend Division to deny the application of D. N. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 4th day of February, 2009.

By: Signed  
Rebecca L. Pauli  
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 4th day of March, 2009.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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