

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

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| In the Matter of                    | ) |                          |
|                                     | ) |                          |
| E. M.                               | ) | OAH No. 08-0655-PFD      |
|                                     | ) | Agency No. 2007-049-1968 |
| <u>2007 Permanent Fund Dividend</u> | ) |                          |

**DECISION**

**I. Introduction**

E. M., a lifelong Alaskan who spent the last four months of 2006 and the first four months of 2007 outside the state, appeals the denial of her 2007 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division found her ineligible on two grounds: it alleged that she had accepted full-time employment outside the state, and it alleged that she had moved to Washington indefinitely and had thereby severed her residency.

Ms. M. requested a formal hearing, which took place on January 14, 2009. The denial is reversed because the evidence taken at the hearing showed that Ms. M. did not accept full-time employment in another state and did not move to another state.

**II. Facts<sup>1</sup>**

E. M. was born in Alaska in October of 1984 and lived in the state continuously until she went to college in Bellingham, Washington for two academic years, 2003-04 and 2004-05.<sup>2</sup> She retained her PFD eligibility while in college.<sup>3</sup> Unhappy in Bellingham, she returned to Alaska

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<sup>1</sup> The present appeal relates only to Ms. M.'s 2007 PFD. The division has also denied Ms. M.'s 2008 PFD, but the informal appeal process is not yet complete for that denial.

At the hearing, the administrative law judge noted that he could not recommend a final disposition to the commissioner on eligibility for the 2008 PFD, since the case was not yet ripe. However, he suggested that in the interest of efficiency he could, if the parties assented, make findings of fact covering 2008 issues, so that the parties would be spared the expense of a live hearing in the future on that dividend. In an explicit, recorded assent, the division's representative agreed to have findings made on factual issues relating to 2008. Recording at 9:52. Ms. M.'s counsel likewise agreed, and he agreed to provide all the testimony he thought relevant to 2008 at the January 14 hearing.

The division has since withdrawn its assent to 2008 findings. Supplemental Submission to Record at 2. In the absence of assent to a broader scope, no factual findings will be made apart from those required solely for the 2007 dividend determination. Since the division is not being held to its stipulation, Ms. M.'s counsel will likewise not be held to his stipulation. In any future proceeding relating to the 2008 dividend, Ms. M. is free to add new testimony or evidence of any kind.

<sup>2</sup> Testimony of E. M.; Ex. 2, p. 4 (statement of E. M.).

<sup>3</sup> See Ex. 1, p. 1, question 1.

for a little more than a year from the summer of 2005 through the summer of 2006, working in food service jobs and renting an Anchorage apartment from her parents.<sup>4</sup>

By the fall of 2006, Ms. M. felt she needed to explore other options. She left Alaska on approximately September 1 of that year, going first to New Mexico for training in a meditation discipline and then to Seattle, where she joined her brother in a group house.<sup>5</sup> She reached Seattle in mid-September. She did not sign a lease or otherwise make permanent living arrangements in Seattle.<sup>6</sup> She did not establish formal ties with Washington such as driver's license or voter registration.<sup>7</sup> Her purpose in going to Seattle was "to check [it] out" as a possible place to live or to pursue further schooling, as well as to spend time with her brother.<sup>8</sup> The opportunity to spend time in the university district to see if she could be happy going to school in Seattle seems to have been a particularly important motive.<sup>9</sup>

When she left Alaska, Ms. M. left her furniture and other household effects in storage here. She continued a committed relationship with an Alaska fisherman, who remained in Alaska. She wanted to sublet her apartment in Anchorage but was unable to do so, and therefore she gave up the apartment.<sup>10</sup> She used her parents' address as her permanent address, an arrangement that is not unusual for 22-year-olds.

Once in Seattle, Ms. M. seems to have behaved as a long-term visitor. She stayed with her brother. She took one dance class as a nonresident. After about a month in the city, she was short of money and took a job at a coffee shop. The job did not have regular hours. She held it for 20 weeks, working an average of 25.4 hours per week.<sup>11</sup>

By January of 2007, Ms. M. had decided that she did not want to settle in Washington.<sup>12</sup> At the beginning of February her Alaskan boyfriend flew to Seattle and the couple began planning a road trip back to Alaska. They purchased a used car for this purpose in early March, but they chose unwisely and the car immediately broke down, requiring several weeks to refurbish the engine. After leaving Seattle at the end of March, the couple spent the month of

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<sup>4</sup> Testimony of E. and E. M.

<sup>5</sup> *Id.*

<sup>6</sup> Testimony of E. M.; Ex. 2, p. 5.

<sup>7</sup> Testimony of E. M.; *see also* Ex. 1, p. 2.

<sup>8</sup> Testimony of E. and E. M.

<sup>9</sup> Ex. 7, p. 2.

<sup>10</sup> Testimony of E. M. Ms. M. could not sublet her apartment because she was renting it at a below-market rate from her father, and he declined to let her subsidize herself at his expense by re-renting it at a market rate.

Testimony of E. M.

<sup>11</sup> She held the job from October 13, 2006 to the end of February, 2007 and worked approximately 508 hours. *See* Ex. A.

April at a meditation retreat in British Columbia, continuing north in early May and reaching Anchorage on May 7.<sup>13</sup>

When the couple purchased the car, it had tags that expired in April. In order to pass through Canada, it was necessary to register the car before making the trip, and as a result they initially registered the car in Washington. However, the couple did not need a car in Seattle and the whole point of the car purchase was to drive back to Alaska.<sup>14</sup>

Ms. M. applied for a 2007 PFD on March 12 of that year, while still in Washington. She was honest on her application about her location at the time of applying.<sup>15</sup>

### **III. Discussion**

#### *A. Acceptance of Job*

The PFD Division has argued that Ms. M. disqualified herself from eligibility for a 2007 PFD because she “accepted full-time, permanent employment in another state or country.” If a person takes this step “at any time from January 1 of the qualifying year through the date of application”—except under certain exceptional circumstances that do not apply here—the person is disqualified from the dividend for that year.<sup>16</sup> The division’s concern on this point is certainly reasonable, since Ms. M. apparently answered “yes” on her application to a question whether she had “accepted full-time permanent employment in another state or country.”<sup>17</sup> That answer was mistaken, however. The documentary evidence at the hearing established beyond question that the work Ms. M. did in Seattle was part-time employment. The disqualification for acceptance of permanent full-time employment therefore does not apply.

#### *B. Severance of Residency*

The qualifying year for the 2007 dividend was 2006.<sup>18</sup> In order to qualify for a permanent fund dividend, the applicant must have been a “state resident” throughout the qualifying year, as well as on the date of application.<sup>19</sup>

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<sup>12</sup> Testimony of E. M. re daughter’s communication to him.

<sup>13</sup> Testimony of E. M.; Ex. 5, p. 3.

<sup>14</sup> Testimony of E. M..

<sup>15</sup> Ex. 1.

<sup>16</sup> 15 AAC 23.143(d)(4).

<sup>17</sup> The “yes” answer is found at item 7D in Exhibit, p. 2, which is a printout showing the answers given online to questions on a website. The questions do not appear on the printout. The ALJ accepts the division’s representation as to what the question was that corresponded to this answer, but notes that the division did not place the question in evidence.

<sup>18</sup> AS 43.23.095(5).

<sup>19</sup> AS 43.23.005(a)(2) and (3).

A person becomes a “state resident” “by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.”<sup>20</sup> Once residency is established, a person “remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent” with intent either to remain in the state indefinitely and make a home in Alaska or “to return to the state and remain indefinitely” with the same intent to make a home.<sup>21</sup>

The PFD Division contends that Ms. M. severed her residency because she “moved” to Washington and did not maintain the intent to return, remain indefinitely, and make a home. Again, the division’s concern is reasonable, because Ms. M. has repeatedly used words like “moving” to describe her shift from Anchorage to Seattle.<sup>22</sup> With the full context supplied by a hearing, however, it is possible to determine that she did not really “move” in the sense of relocating her home to Seattle.<sup>23</sup> She went on a long-term visit to see how she would like Seattle. The primary reason to investigate Seattle was the possibility of later committing to attend college there, a long-term option that is consistent with maintaining Alaska residency.<sup>24</sup> She also admits the possibility that she might have decided to live in Seattle in the longer term without attending school; she did not, however, actually commit to that option by moving her household effects or otherwise taking concrete steps inconsistent with a temporary visit. The mere contemplation of the possibility of deciding to leave Alaska permanently does not sever residency. A temporary stay with one’s brother in another city to decide whether one wants to relocate permanently or attend school there is consistent with maintaining Alaska residency.

In the qualifying year for the 2007 dividend, Ms. M.’s absence was approximately 120 days, well within the 180 days’ absence the PFD statute permits without losing eligibility,

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<sup>20</sup> AS 01.10.055; 43.23.095(7).

<sup>21</sup> AS 01.10.055(c); 43.23.095(7).

<sup>22</sup> *E.g.*, Ex. 2, p. 6 (“moving to Seattle”); Ex. 2, p. 10 (“moved from Alaska temporarily”). Ms. M. has complained about “the way they pick words out of my application.” Ex. 7, p. 2. She seems oblivious to the weight a poorly-chosen word can carry. On the other hand, the lack of “spin” in her written correspondence and testimony shows a guilelessness that gives her testimony on factual details strong credibility.

<sup>23</sup> In formal appeals, the Department of Revenue has long been willing to look behind erroneous or poorly-phrased information in applicants’ initial paperwork to discern the reality. An example with many parallels to this case is *In re D. & J.M.*, OAH No. 05-0772-PFD (Commissioner of Revenue 2006), where a family who spent nine months outside Alaska likewise improvidently used the word “moved” to describe a fundamentally temporary absence, much of which was spent (as in Ms. M.’s case) earning money to finance a return to Alaska by car. The dividend was granted on appeal notwithstanding the wording of their application documents.

<sup>24</sup> *See* AS 43.23.008(a)(1) (full-time postsecondary education is an allowable absence for maintaining PFD eligibility).

provided it is “for any reason consistent with the individual’s intent to remain a state resident.”<sup>25</sup> Since her exploratory trip to Seattle was consistent with that intent, her absence was allowable. She maintained the necessary intent both in the qualifying year and on March 12, 2007, the date of her application (by which time she was on the point of returning to Alaska). She therefore is not disqualified from a 2007 PFD through a change in her state residency.

#### **IV. Conclusion**

Because she has disproven the bases advanced for denial of her 2007 Permanent Fund Dividend, E. M. is entitled to that dividend. The denial is reversed.

DATED this 5<sup>th</sup> day of February, 2009.

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 6th day of March, 2009.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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

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<sup>25</sup> AS 43.23.008(a)(16). The division makes much of the fact that Ms. M. chose absence code “K” on her application to characterize her absence during 2006. *See* Ex. 1, p. 3. The division says absence code “K” corresponds to “other.” The division faults Ms. M. for not selecting absence code “I” for “vacation,” suggesting that the choice of “K” is not consistent with a vacation. Position Statement at 4. The division may be correct that absence code “K” is not consistent with a vacation. Ms. M. was not on vacation. The PFD statutes and regulations do not require, however, that an applicant be on vacation to qualify for the 180-day allowable absence in AS 43.23.008(a)(16). In any event, the selection of a particular absence code has never been regarded, in the appeal context, as the final word in characterizing an absence. *See In re D. & J.M., supra* note 23 (selection of absence code “J” not controlling).