

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

IN THE MATTER OF)	
)	
P. S. D.)	
)	OAH No. 08-0663-PFD
<u>2007 Permanent Fund Dividend</u>)	Agency No. 2007-032-1480

DECISION

I. Introduction

P. D.'s application for a 2007 permanent fund dividend (PFD) was denied because the Permanent Fund Dividend Division determined that Mr. D. did not meet the definition of "state resident" for purposes of the PFD program. Following an unsuccessful informal appeal, Mr. D. requested a formal hearing by correspondence.

By notice dated December 10, 2008, Mr. D. was given until January 12, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both parties then had until January 22, 2009, to respond to any documents received from the other. The division filed a position statement and hearing exhibits. Mr. D. did not respond to the division's position statement or add to the record on appeal. The division's denial of Mr. D.'s application is affirmed because he did not establish by a preponderance of evidence that he met the residency requirements for purposes of the 2007 PFD program.

II. Facts

Mr. D. had received PFDs until his 2005 application was denied because in 2004 he moved to Washington to be with his fiancé, maintained his principal home in Washington and severed his residency for PFD purposes.¹ Although his principal home was in Washington, Mr. D. maintained ties to Alaska, returning on December 16, 2004, for 20 days and leaving again on January 5, 2005. He next returned on April 20, 2005, and remained 162 days, until September 29, 2005. During this period Mr. D. began to build a residence in a remote location on the west side of No Name Island. Mr. D.'s vehicle, while physically in Washington, remained registered in Alaska. Mr. D. is registered to vote in Alaska, and travels on visas identifying Alaska as his home. His only source of income comes from his work in Alaska. Mr. D. and his fiancé were married in Washington during October of 2005. He and his wife traveled extensively, returning to Alaska on April 20, 2006.

¹ Exhibit 6 at 1, Exhibit 7 at 2.

Mr. D. wrote in support of his appeal that at the time of their marriage in October, 2005, he and his wife intended to make their home in Alaska. Before leaving to travel, he terminated the lease on the apartment and moved the majority of their belongings into storage in Washington State. It was only after they returned to Alaska in April, 2006, that they shipped most of their belongings to No Name Island. By March, 2008, the couple moved all of their belongings to Alaska. Since their return to Alaska, they have worked on their home, staying at Mr. D.'s or his wife's parents' residences in No Name when the elements made their home-in-progress uninhabitable. Mr. D. and his wife own a set net site and now have a son who was born in No Name.

Mr. D. did not apply for a 2006 PFD, recognizing that he had been absent from the State in excess of 180 days in 2005 and thus was not eligible.² He did timely apply for a 2007 PFD because he had returned to the State on April 20, 2006, and was not absent in excess of 180 days.³

Mr. D. argues that he claimed residency nowhere other than Alaska and has never worked anywhere other than Alaska. As evidence in support of maintaining and establishing customary ties to Alaska, Mr. D. offers that he has built and is now living in his house on No Name Island, and his only source of income is commercial set net fishing. He holds a limited entry permit and in 2006 and 2007 he averaged 100 days of fishing, not including setup and maintenance of the site. Mr. D. also votes in No Name and all medical care concerning the birth of their child was in No Name.

III. Discussion

The division contends that Mr. D. is ineligible for the 2007 PFD because he severed his residency in 2004 and did not meet the definition of a "state resident as it applies to the PFD program for all of 2006, the qualifying year for 2007. Mr. D. has the burden of proving that he meets all of the eligibility requirements for a 2007 PFD, including residency.⁴

The division does not challenge Mr. D.'s assertion that prior to 2004 he had established residency for PFD purposes. The division's decision to deny Mr. D. a 2005 PFD because it concluded he severed residency is relevant for the limited purpose of explaining the division's position. It is not controlling on the issue of whether Mr. D. had actually severed residency. An Alaska resident is not required to file for a PFD. It is a resident's prerogative to determine whether he or she wishes to apply for a PFD. It is also a resident's right to decide whether to pursue an application denial. The decision to deny a PFD application is a unilateral decision by the division

² Exhibit 5.

³ Exhibit 1.

and not an adjudication entitled to a preclusive effect in subsequent litigation. Therefore, while informative, it is not the division's denial decision to deny Mr. D.'s 2005 PFD application is not persuasive evidence that he severed his 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). 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 that once a person has established residency, that person remains a resident during an absence unless the person "establishes or claims residency in another state" or performs other acts or is absent under circumstances that are inconsistent with the intent to return to Alaska to remain indefinitely and to make a home."⁵

Intent, while subjective, is demonstrated through objective acts. Mr. D. returned to Alaska, is building a home near his set net site, has a limited entry permit, and all of his income is generated in Alaska. His parents have a residence on No Name Island. He is registered to vote and has a vehicle registered in Alaska. All are factors that seemingly weigh in favor of Mr. D.'s remaining an Alaska resident during his absence.

However, there are also factors that demonstrate he performed other acts that were evidence of establishing residency in Washington by being present with the intent to remain indefinitely. Mr. D. owned a long term lease on an apartment in Washington where he lived with his fiancé. His fiancé was employed in Washington. The bulk of his possessions were in Washington. When he terminated his lease on the apartment he kept his possessions in storage in Washington. All factors that support the conclusion that Mr. D. was physically present in Washington with the intent to remain indefinitely.

The challenge presented by this case is that Mr. D. elected a hearing by correspondence so he could not be questioned. Questioning may have established that when Mr. D. went to Seattle there was always a plan to return to Alaska to remain indefinitely at a specific time in the future. Questioning may have established steps he was taking while absent to begin building his home such as when did he obtain the property, the belongings he left in Alaska, ties to the community, the date upon which he registered to vote, etc. He went to Washington and established his principal place of

⁴ 15 AAC 05.030(h).

⁵ AS 01.10.055(a), (c).

residence to be with his fiancé who was employed in Washington. Had Mr. D. testified, he could have explained whether his fiancé was working under a contract for a specific period of time, etc.

It is Mr. D.'s burden to establish that it is more likely than not that at all times relevant he met the statutory definition of a resident as required by the PFD program. It is a close call. However, the evidence contained in the record, without the further explanation that may have been provided through testimony, does not tip the scales in favor of Mr. D. The record is insufficient to establish that all times relevant, Mr. D. had not established residency elsewhere.

IV. Conclusion

Mr. D. has failed to establish by a preponderance of the evidence that while making his principal home in Washington he maintained the intent to return to Alaska and remain indefinitely. His most recent period of residency for purposes of reestablishing residency commenced on April 20, 2006. The decision of the Permanent Fund Dividend Division to deny the application of P. S. D. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 27th day of March, 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 24th day of April, 2009.

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

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