

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

IN THE MATTER OF )  
 )  
 T. M. )  
 ) Case No. OAH 08-0699-PFD  
 )  
2008 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

T. M. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. M. was not eligible, and it denied the application initially and at the informal appeal level. Mr. M. requested a formal hearing by written correspondence only. Review of the entire record and due deliberation lead to the conclusion that Mr. M. has not met his burden of proving that the division’s decision was in error. The decision to deny Mr. M.’s application is therefore affirmed.

**II. Facts**

Mr. M. was born in Alaska and has been receiving dividends from 1986 up through 2006. In 2005, Mr. M. was summoned for jury duty. He was excused from service after his father returned the notice with a note stating that “T. is going to college in Thailand.”

In 2007 Mr. M. timely applied for that year’s dividend, but on May 15, 2007, Mr. M. wrote a letter to the division stating that “I have moved to Minnesota to take care of my ill mother. I have no plans of returning to Alaska any time soon. I wish to cancel my PFD application filed in January. Thank you.”<sup>1</sup> The letter contained Mr. M.’s date of birth and Social Security number, and his address and phone number. Below these, Mr. M. wrote, “please call if you have any questions.” The division accepted this letter as a voluntary request to withdraw the 2007 application, and it did not issue a 2007 dividend to Mr. M.

Mr. M. applied for a 2008 dividend using an online application form on March 11, 2008.<sup>2</sup> Mr. M. indicated on the form that he had received the previous year’s dividend, that he was in Alaska on that day, and that he had not been absent from Alaska for more than 90 days in 2007. The division determined that the remote host IP address, which indicates where the computer system used to apply online was located, indicates that Mr. M.’s application was filed from

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<sup>1</sup> Exhibit 8, page 1.

<sup>2</sup> Exhibit 1.

Bangkok, Thailand.<sup>3</sup> In its position statement, the division requested that Mr. M. explain the inconsistency between the apparent location of the computer he applied on and his statement that he was in Alaska when he applied, and also why he reported no absences of over 90 days but his father stated on the jury form that Mr. M. was going to college in Thailand. Mr. M. did not respond to this request.

In his informal appeal request, Mr. M. explained his letter of May 15, 2007:

The letter in question which was sent to your office was written in part by my mother because she was afraid if I received a PFD while on vacation I could potential[ly] end up in jail if caught. I wish to state for the record there was no intention to move to the state of Minnesota.

Mr. M. stated that before he went to Minnesota he had worked at McDonald's in Anchorage, and that after he returned to Alaska he went to Kodiak and began working at a cannery. Mr. M. provided itineraries showing that he had traveled from Anchorage to Minnesota on April 4, 2007, and that he flew from Minnesota to Kodiak on August 8, 2007.

In his formal hearing request, Mr. M. stated that he "went to take care of [his] ill mother, i.e. shopping, cleaning her house." Mr. M. stated that "I bought two separate tickets because I didn't know when I was going back home to Alaska." Finally, Mr. M. wrote in part,

I did go to take care of my sick mother. As I said in my first letter in May 15, 2007 I did not intend to return any time soon yet I didn't say I would never come back. To me that is why I feel I should get my PFD for the year 2008. When I applied in 2007, I didn't know I would be visiting my mom and taking care of her that year.

Mr. M. signed his formal hearing request form on December 12, 2008. The handwriting on this form appears to be in the same hand as the entire letter of May 15, 2007.<sup>4</sup>

### **III. Discussion**

In order to qualify for a permanent fund dividend, a person must be an Alaska resident all through the qualifying year and at the date of application.<sup>5</sup> A person establishes residency in Alaska by being physically present in the state with the intent to remain indefinitely and to make a home in the state.<sup>6</sup> A person who establishes residency and then leaves the state is no longer an Alaska resident if the person is absent under circumstances that are inconsistent with the intent to

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<sup>3</sup> Exhibit 9.

<sup>4</sup> Exhibit 7; Exhibit 8, page 1.

<sup>5</sup> AS 43.23.005(a)(2),(3).

<sup>6</sup> AS 01.10.055(a).

remain in the state indefinitely and to make a home in the state.<sup>7</sup> At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was incorrect.<sup>8</sup>

In determining residency, an important element is the definite or indefinite nature of a person's intent to remain in Alaska. The converse is true when determining whether a person is absent under circumstances that are inconsistent with Alaska residency. This is not to say that every person who leaves the state must know their precise date of return in order to retain residency. But persons who intend to return to Alaska to remain and make their home can be expected to have at the least a general sense of when they will return, or have their returns contingent on events that can reasonably be expected to occur within an identifiable period of time.

In his first letter to the division, Mr. M. stated that "I have moved to Minnesota" and that "I have no plans of returning to Alaska any time soon." While it is true that Mr. M. did not preclude ever returning to Alaska, his language is fairly unequivocal. This letter strongly suggests that Mr. M. did not know when, or if ever, he might be returning to Alaska to make his home. The fact that Mr. M. voluntarily relinquished his 2007 dividend and that he flew to Minnesota on a one-way ticket supports the conclusion that Mr. M. was living in Minnesota and planned to make his home there for an indefinite period of time.

Mr. M.'s statement that his letter was written in part by my mother because she was afraid if I received a PFD while on vacation I could potential[ly] end up in jail if caught" is unpersuasive. Mr. M. does not explain which part of the very short letter was written by his mother. If Mr. M.'s travel to Minnesota was intended as nothing more than a vacation, simply disclosing the long vacation at that time would have been sufficient to avoid any hint of dishonesty. It would not have been necessary for Mr. M. to assert, incorrectly, that he had "moved" to Minnesota. Mr. M.'s statement in his appeal that "I wish to state for the record there was no intention to move to the state of Minnesota" cannot be reconciled with his previous statement that "I have moved to Minnesota." Mr. M.'s credibility is somewhat impaired by the fact that he declined to testify or to answer the division's questions about his absences to Thailand and the fact that his computer indicated he was in Bangkok on the day he certified that he was in Alaska.

#### **IV. Conclusion**

A preponderance of the evidence shows that Mr. M. severed his Alaska residency as of May 15, 2007. Mr. M. has not met his burden of proving that the division's decision was in error. The

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<sup>7</sup> AS 01.10.055(c).

<sup>8</sup> 15 AAC 05.030(h).

decision of the Permanent Fund Dividend Division to deny the application of T. M. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 9th day of March, 2009.

By: Signed  
DALE WHITNEY  
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 7th day of April, 2009.

By: Signed  
Signature  
Dale Whitney  
Name  
Administrative Law Judge  
Title

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