

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

IN THE MATTER OF)
)
 K. W.)
) Case No. OAH 09-0020-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

K. W. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. W. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. W.’s request, a formal hearing was held on April 2, 2009. PFD Specialist Kim Colby represented the PFD Division. Ms. W. did not appear or show cause for her failure to appear; this decision is therefore based on the record in accordance with 15 AAC 05.030(j).¹

Ms. W. has not met her burden of showing that the division’s decision was in error. The decision to deny Ms. W.’s application for a 2007 dividend is affirmed.

II. Facts

Ms. W. reached eighteen years of age on August 31, 2006. On December 31, 2007, Ms. W. wrote the following letter in support of her appeal:

To Whom It May Concern:

In response to the recent notification that my application for the PFD was denied I would like to submit the following rebuttal. I am a military dependant and have lived in Alaska since 2001 (Fairbanks/Anchorage). For each year after the first, my family received the PFD. In AUG 2005, my step father, T. H. was deployed to Iraq with the 172nd SBCT. The unit was to have returned in AUG of 2006; unfortunately, they were involuntarily extended for an unspecified amount of time. In May 2006, I graduated from Lathrop High School, and started my summer jobs at The G. D. #8, O. N., and No Name Ice Cream, in Fairbanks AK. In JUL 06, my family received PCS orders requiring us to move from Alaska. My family moved at the end of August 2006.

¹ Ms. W. did appear by telephone at a hearing on February 24, 2009, on a motion for summary adjudication filed by the division. The administrative law judge denied the division’s motion and ruled that Ms. W. was entitled to a hearing. Before a hearing date could be scheduled, contact with Ms. W., who had been using a cell phone, was lost. The OAH made multiple attempts to contact Ms. W. to schedule a hearing. At one point, Ms. W. apparently stated that she wished to withdraw her appeal and would submit a written notice to that effect, but the file contains no written submission from Ms. W. filed after her appeal. The OAH eventually set a hearing date, left a voicemail message for Ms. W. at her cell phone number, and sent a written notice of the hearing to the last known address for Ms. W.

I went to MO with my family in AUG 06. I then went to Rexburg, Idaho, to attend BYU the Winter-Summer Semester, December 2006. I did not leave forwarding addresses for myself, that is why all my mail had been returned.

I apologize for any confusion.

Thanks for your consideration in this matter.

Ms. W. has not submitted any evidence indicating whether she intended to return to Alaska, either at the time she left the state or after August 31, 2006, when she became an adult. Ms. W. submitted a copy of a letter that her mother wrote to the division, which appears to indicate that Ms. W.'s parents were not sure where they considered home to be after leaving Alaska. This letter contains no claim that Ms. W. or her parents intended to return to Alaska after leaving the state in August of 2006. Ms. W.'s mother wrote in part, "if my family and I are entitled to the PFD then great if not then I am ok with that as well." There is no evidence that Ms. W. ever returned to the state.

III. Discussion

In order to qualify for a permanent fund dividend, a person must have been an Alaska resident all through the qualifying year and at the date of application.² A person becomes an Alaska resident by being physically present in the state with the intent to remain indefinitely and to make a home in the state.³ A resident who leaves Alaska continues to be an Alaska resident if the person intends to return to Alaska to remain indefinitely and to make a home, unless the person establishes residency somewhere else or is absent under conditions that are inconsistent with the intent to return to Alaska to remain indefinitely.⁴ At a formal hearing, the person who has requested the hearing has the burden of showing that the division's decision was in error.⁵

For a 2007 dividend, the qualifying year was 2006. Thus, in order to qualify for a 2007 dividend Ms. W. would have had to show that when she left Alaska in 2006, she intended to return to Alaska and that she maintained that intent all the way up to her date of application.

Ms. W. has presented very little evidence, and has not suggested at any point that when she left Alaska in 2006 she intended to return. Absent some evidence that she has maintained the intent to return to Alaska to remain indefinitely and to make her home in the state, Ms. W. cannot be found to have been an Alaska resident all through the qualifying year. The record contains no such evidence.

² AS 43.23.005(a)(2)-(3).

³ AS 01.10.055(a).

⁴ AS 01.10.055(c).

⁵ 15 AAC 05.030(h).

IV. Conclusion

Ms. W. severed her Alaska residency when she moved away from Alaska during the qualifying year, and is therefore not eligible for a 2007 dividend. The decision of the Permanent Fund Dividend Division to deny the application of K. W. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 20th day of April, 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 18th day of May, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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