

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

In the Matter of	)	
	)	
J. T. L.	)	
	)	OAH No. 09-0039-PFD
<u>2007 Permanent Fund Dividend</u>	)	Agency No. 2007-053-9847

**DECISION**

**I. Introduction**

J. T. L. 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. L. took actions inconsistent with maintaining her Alaska residency. She requested a formal hearing which was held on February 23, 2009. Ms. L. participated in person and was assisted by her father. PFD Specialist Peter Scott participated telephonically for the division. The preponderance of the evidence establishes that Ms. L. did not sever her Alaska residency but that she did obtain a benefit by claiming residency in another state which is a disqualifying act. She is, therefore, ineligible for the 2007 PFD. The division's decision is affirmed.

**II. Facts**

Ms. L., now age 20, was born in Alaska and except for brief trips outside has remained in Alaska. When she was 17 she got pregnant and had a baby boy. The paternal grandparents bought Ms. L. and her son a one way ticket to Washington State to spend Christmas with them and to try to convince the baby's father to take a paternity test. Ms. L. and her son arrived in Washington on December 21, 2006. The baby's father denied paternity and refused to take a DNA test.

On January 3, 2007, the paternal grandparents sent Ms. L. and her son to stay with her son's paternal relatives, (aunt and uncle) in No Name, Oregon. The grandparents were going to try to convince their son to take a paternity test. In February 2007, the aunt and uncle told Ms. L. to apply for public assistance from the State of Oregon. She completed the 14 page Oregon Department of Human Services Application of Services form. The form, at page 13, contains a list of items that the applicant is agreeing to including that the applicant declare "I am a resident of Oregon."<sup>1</sup>

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<sup>1</sup> Exhibit 8 at 15.

Ms. L., who tests at the ninth grade level, read some but not all of the application and was unaware that by applying she would be declaring that she was a resident of Oregon. She received food stamps and cash assistance (Temporary Assistance for Needy Families) from Oregon. The aunt and uncle then took control of the food stamps and cash assistance. After six weeks, being no closer to establishing paternity, she called her father who purchased Ms. L. a plane ticket. She returned to Alaska on March 18, 2007.

When she went to Oregon she took only what she believed she and the baby would need for a short trip. She testified that the bulk of her possessions stayed in Alaska: computer, stereo, clothing, photos, crib, baby clothes and supplies, etc. Her parents and friends were here. Ms. L. had only planned on being gone a short period of time and packed accordingly. When questioned on how she planned to return home when the grandparents had only purchased a one way ticket, Ms. L. replied that she had not given it much thought and knew if the paternal grandparents would not purchase a return ticket, her father would.

### **III. Discussion**

The division contends that Ms. L. 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 obtaining benefits as a result of claiming residency in another state. Ms. L. has the burden of proving by a preponderance of the evidence that her absence was temporary, she has always intended to remain in Alaska indefinitely and she did not engage in a disqualifying act.<sup>2</sup>

#### **A. Residency**

It is undisputed that Ms. L., prior to leaving Alaska in December 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)

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<sup>2</sup> 15 AAC 05.030(h).

“performs other acts or is absent under circumstances that are inconsistent with intent [to remain in the state indefinitely].”<sup>3</sup>

Ms. L. left the state on a one way ticket. This is evidence in support of the division’s position that she had left the state to reside elsewhere for an indefinite period of time. However, its persuasive value is outweighed by Ms. L.’s lengthy history of ties to Alaska, and her actual return. At the hearing, additional facts were developed that had not been presented to the division including that Ms. L.’s family and friends are in Alaska, and, except for the few items needed for a short trip, all of her belongings remained in Alaska. She believed she would be gone for a week and packed accordingly. Her stay was extended because she trusted the family of the man she believed was the father of her child when they told her they would assist her in establishing paternity.

Ms. L., while perhaps naive, testified credibly. She admits signing the request for services and the receipt of services but denies any intent to sever her Alaska residency. It is more likely than not that at all times relevant, Ms. L. maintained the requisite intent to return to Alaska to remain indefinitely. Thus, for purposes of a 2007 PFD, Ms. L. remained an Alaska resident.

#### B. Disqualifying Acts.

To be eligible for a PFD, in addition to meeting the PFD residency requirement, an applicant must meet, not engage in, certain disqualifying actions. The Department has promulgated regulations to assist the division in assessing eligibility of an applicant.<sup>4</sup> One such regulation, 15 AAC 23.143(d), identifies 17 disqualifying acts. Obtaining a benefit as “a result of establishing or maintaining any claim of residency in another state....” is a disqualifying act<sup>5</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>6</sup> The regulation disqualifying an applicant who has obtained benefits from a state by claiming residency in that state is absolute.

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<sup>3</sup> AS 01.10.055(a), (c).

<sup>4</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>5</sup> 15 AAC 143(d)(17).

<sup>6</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.

Here, it is undisputed that Ms. L. received benefits from the State of Oregon by signing a form that declared her to be a resident of Oregon during the qualifying period. 15 AAC 23.143(d) simply requires the division to ask whether the applicant has taken a disqualifying action. If the applicant has done so, the division must deny the application without further inquiry into the applicant's status as a resident. This bright-line rule affords the Department no choice. The result of the absolute rule in this case is harsh. Ms. L. never intended to claim she was a resident of Oregon; however, she did. She has made a mistake with important financial consequences.

#### **IV. Conclusion**

It is uncontested that Ms. L. was an Alaska resident prior to January 1, 2006. The preponderance of the evidence is that through the date her application was complete, Ms. L. maintained the intent to return to Alaska and remain indefinitely. However, Ms. L. is ineligible for a 2007 PFD because she maintained obtained benefits in another state by claiming residency in that state, during the qualifying period, in violation of 15 AAC 23.143(d)(17). 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 J. T. L. for a 2007 permanent fund dividend is **AFFIRMED**.

DATED this 24th day of April, 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 22<sup>nd</sup> day of May, 2009.

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

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