



### III. Discussion

#### A. Standard of Proof

The burden of proof and of coming forward with evidence is on Ms. L.<sup>9</sup> Facts must be established by a preponderance of the evidence.<sup>10</sup> To warrant reversal of the division's decision, Ms. L. must establish facts demonstrating that the division's decision was erroneous.<sup>11</sup>

#### B. Eligibility

The division's informal conference decision states that Ms. L.'s application was denied on three grounds: (1) failure to provide requested information within 30 days; (2) taking actions inconsistent with Alaska residency; and (3) failure to maintain residency.<sup>12</sup>

##### 1. *Failure to Provide Information*

15 AAC 23.173(b) states:

The department will, in its discretion, require an individual to provide other information to accompany the individual's application. If the department notifies an individual that the information included on, or provided with, the application form is insufficient for any reason, the individual must provide the additional information as requested by the department. ...

15 AAC 23.173(d) provides that if an individual does not timely provide all information requested by the department, the application will be denied.

In this case, the division asked for Ms. L.'s tax return; she responded that she did not file a tax return. Thus, Ms. L. did not willfully fail to provide that document. The division also requested "proof" that Ms. L. had stored her belongings in Alaska up to the date of the request; Ms. L. responded that she had not stored her belongings in Alaska after January, 2007. Again, Ms. L. did not willfully fail to provide the requested "proof": the requested "proof" does not exist. The division did not have reason to deny Ms. L.'s dividend on its first asserted ground.

##### 2. *Taking Actions Inconsistent With Alaska Residency*

In determining whether an individual has maintained Alaska residency, under 15 AAC 23.143(a), the division considers "whether or not an individual has...taken...action...that is inconsistent with an intent to remain in Alaska indefinitely."<sup>13</sup>

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<sup>8</sup> Ex. 7, pp. 1-2.

<sup>9</sup> 2 AAC 64.290(e).

<sup>10</sup> *Id.*

<sup>11</sup> 15 AAC 05.030(h).

By its terms, 15 AAC 23.143(a) simply states that certain facts will be considered in determining whether or not an individual has maintained Alaska residency. 15 AAC 23.143(a) does not state a separate ground for denial of an application. The issue to be determined, with respect to 15 AAC 23.143(a), is whether an individual has maintained Alaska residency, not whether the individual engaged in a specific conduct that renders the individual ineligible for a dividend.

But although the informal conference decision expressly states that the reason for denial of the dividend was that Ms. L. had taken actions inconsistent with residence, the decision specifies 15 AAC 23.143(d)(1), not 15 AAC 23.143(a), as the legal authority for denial.<sup>14</sup> 15 AAC 23.143(d)(1) makes an individual ineligible if the individual has maintains their principal home outside of the state, except while absent for specified reasons not present in this case. Thus, in order to show that the division's decision was erroneous, insofar as the decision was based on 15 AAC 23.143(d)(1), the burden of proof was on Ms. L. to show that she maintained her principal home in Alaska after she left the state. Ms. L. provided no evidence to that effect. Thus, she has failed to meet her burden of proof with respect to the division's second asserted ground for denial.

### 3. *Residency*

The intent to return to Alaska and remain indefinitely "is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere."<sup>15</sup> Ms. L. provided no evidence of such ties to support her assertion that she maintained the intent to return to Alaska and remain indefinitely. Accordingly, she has failed to meet her burden of proof with respect to the division's third asserted ground for denial.

## **IV. Conclusion**

Ms. L. failed to show that the division erred in determining that she was ineligible for the 2007 dividend on two grounds: (1) that she maintained her principal home in another state during the qualifying year; and (2) that she did not retain the intent to return to Alaska and

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<sup>12</sup> Ex. 7, p. 1.  
<sup>13</sup> 15 AAC 23.143(a)(3).  
<sup>14</sup> Ex. 7, p. 2.  
<sup>15</sup> 15 AAC 23.143(a).

remain indefinitely through the date her application was complete. The division's denial of her application is therefore AFFIRMED.

DATED June 25, 2009.

Signed  
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Andrew M. Hemenway  
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 27th day of July, 2009.

By: Signed  
\_\_\_\_\_  
Signature  
Andrew M. Hemenway  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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