

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

In the Matter of:)	
)	
L. J. F., S.A. F., M. J. F. (minor))	
and Q. F. (minor))	
)	OAH No. 09-0101-PFD
<u>2008 Permanent Fund Dividends</u>)	Agency No. 2008-032-2842

DECISION

I. Introduction

L. "L." F. and his wife S. A. F. are longtime Alaskans who for several years spent most of their time in Hawaii, although they retained extensive connections to Alaska and Mr. F.'s main profession was conducted here. After returning to Alaska full-time in June of 2007, the F.s timely applied for a 2008 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division denied the applications initially and at the informal appeal level, reasoning that the F.s severed their Alaska residency in 2004 and did not reestablish residency until after the beginning of the qualifying year for the 2008 dividend.

At the F.s' request, a formal hearing was held on April 6, 2009. The division's denial is affirmed, not because the F.s severed residency, but instead solely because the F.s had a status in the qualifying year that made them ineligible for the 2008 dividend.

II. Facts

The facts of this case are not in dispute; the sole issue is their legal significance. Unless otherwise attributed, the facts set out below are based on testimony at the hearing.

L. F. established his Alaska residency in 1989, and S. hers in 1990. They settled in Girdwood, and from that base L. worked as a hunting guide (his principal profession) and also worked as a carpenter. He became a member of an Anchorage local of a carpenters' union. The union had reciprocity with Hawaii. All wages and benefits were received through the Alaska local.

In 2004, the F.s owned two homes in Girdwood. They sold the one they were living in and placed the furniture in storage in Alaska. In March of 2004 they relocated to Hawaii, where there were better opportunities for Mr. F. to work on construction projects. They purchased a furnished residence there. That home remained their principal residence until approximately June 3, 2007.

While his family was based at the Hawaii residence, L. F. continued to spend two to five months per year in Alaska pursuing his guiding work and working on construction jobs in this state.

He also accepted a series of full-time but nonpermanent carpentry assignments in Hawaii. He sought, without immediate success, a more stable position in Alaska as a construction superintendent. Meanwhile, his wife and young children spent almost all of their time in Hawaii. The family maintained full “paper ties” with Alaska, and they neither claimed nor accepted benefits of Hawaii residence.¹

In mid-2007, L. F. got the superintendent position he had been seeking in Alaska. The family returned full-time to Girdwood in June of that year, purchased a house there (in addition to the one they had owned all along), removed their belongings from storage, and moved in. The house in Hawaii is currently rental property.

III. Discussion

The regulation at 15 AAC 23.143(d)(1) establishes that an individual “is not eligible” for a PFD if, during the qualifying year or during the application year up to the date of application, the individual “maintained the individual’s principal home in another state or country . . . except while absent for a reason listed” in Alaska Statute 43.23.008(a)(1)-(3), (9)-(11) or (in some cases), (13). Those reasons relate to people absent to receive education, to serve in the military, to serve in Congress, or to staff a state or Congressional office. In the first five months of 2007, the F.s maintained their principal home in Hawaii. It is undisputed that they were not absent for one of the reasons referenced in 15 AAC 23.143(d)(1). Therefore, they are not eligible for a dividend in the year for which 2007 is the qualifying year.

Because the automatic disqualification applies, it is not necessary to address question of legal residency, a question that at least in the case of L. F. would be quite difficult to answer. Although an individual must be an Alaska resident throughout the qualifying year to be eligible for a dividend,² it is possible to retain Alaska residency while making one’s principal home in another state or country.³ Disqualification from PFD eligibility is not the same as loss of residency. It is a disqualification nonetheless, however, and the F.s are unable to receive a 2008 PFD.

¹ The paper ties included driver and professional licenses, voting, and bank accounts. The F.s did erroneously check a box for “part-year” rather than “non-resident” on a tax return in 2004, but this error was not repeated and conferred no benefits on them. They did not receive 2005-2007 PFDs during their absence because they had more than 180 days outside the state during the qualifying years. *Cf.* Ex. 5, p. 9.

² AS 43.23.005.

³ *See, e.g., In re D.L.D.*, OAH No. 06-0552-PFD (Dep’t of Revenue, 2006).

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the applications of L. and S. F., as well as of their children M. and Q. for a 2008 Permanent Fund Dividends is AFFIRMED.

DATED this 16th day of July, 2009.

By: Signed
Christopher Kennedy
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 14th day of August, 2009.

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

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