

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

IN THE MATTER OF)
)
 S. R.)
) Case No. OAH 09-0103-PFD
 2008 Permanent Fund Dividend)

DECISION

I. Introduction

S. R. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. R. was not eligible, and it denied the application initially and at the informal appeal level. Ms. R. requested a formal hearing by written correspondence only.

Based on the entire written record, Ms. R. has not demonstrated that the division’s decision was in error. The division’s decision to deny Ms. R.’s application is affirmed.

II. Facts

There is very little evidence in the record. Ms. R. submitted an online application, stating that her Alaska residency began on June 23, 2007. In her appeal, Ms. R. wrote, “moved back to Alaska 23 Jun 07, residency unchanged since birth.” In the portion of the form for explaining issues, Ms. R. wrote,

Alaska resident since birth. Never changed residency or voted in another state. As an adult, only left state while serving active duty military and briefly as a military spouse of another resident. My husband’s 2008 PFD was approved, we moved back together on same date (Jun 07), yet I have a 35 resident history (more than he does) and was denied. Am now active duty military, again serving the United States as a coast guardsman, deployed to Virginia for training. Will return to Alaska, still an Alaska resident, Apr 09.

The following are factual assertions submitted by the division in a pre-hearing brief. There is no evidence available in the record to support these assertions, but Ms. R. was afforded an opportunity to respond to them and did not do so. Ms. R. was raised in Alaska. She joined the Coast Guard and left Alaska on July 27, 1995, for a military Permanent Change of Station. Ms. R. continued to apply for and receive PFDs while absent from the state through 2001. In 2002 Ms. R. was not able to meet the 72-hour return requirement, and she did not apply for a dividend that year. Ms. R. applied for and was granted a 2003 dividend. Ms. R. did not apply for a 2004 dividend. At some time in 2003 or 2004, Ms. R. was discharged from active duty with the Coast Guard.

The division has submitted a copy of Ms. R.'s application for a 2005 dividend. Ms. R. stated in that application that she was absent from Alaska from June 7, 2002, to September 21, 2004, and again from September 29, 2004, with no end date listed for the absence. Ms. R. indicated by her absence code that she was absent during these times accompanying an eligible Alaska resident, whom she identified as T. L., and she stated that the reason for her absence was "accompanied active duty husband to new duty station."¹ On an attached page, Ms. R. wrote, "spouse has not been to Alaska since 2002, and does not feel he is eligible. He does not want to apply again until we return to Alaska."² The division denied Ms. R.'s 2005 application because she did not provide additional requested information and Ms. R. did not apply for dividends in 2006 or 2007.

According to the division, Ms. R.'s husband, Mr. L., applied for dividends from 1993 through 1998. The division states that Mr. L. applied for a 2008 dividend. The division states that Mr. L. was not eligible, but it paid this dividend in error and has since assessed it.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident all through the qualifying year and at the date of application.³ An Alaska resident remains a resident while absent if the person has maintained at all times the intent to return to Alaska to remain indefinitely and to make a home, and has not been absent under circumstance inconsistent with that intent.⁴ A person who has been allowably absent for more than five years is presumed to no longer be an Alaska resident.⁵ At a formal hearing, the person who has requested the hearing has the burden of demonstrating that the division's decision was in error.⁶

While Ms. R. does have some ties to Alaska, the division notes that she has been absent from the state for ten years, except for occasional return visits. The division asserts that Ms. R. ceased to be an Alaska resident some time around 2005.

Ms. R. may have remained an Alaska resident the entire time she was absent, but there is little or no evidence in the record to rebut the presumption that she is no longer an Alaska resident. At one point, Ms. R. stated that her most recent Alaska residency did not begin until June, 2007. But there is little or no evidence to support Ms. R.'s assertion that she reestablished her residency

¹ Exhibit 9, page 2.

² Exhibit 9, page 4.

³ AS 43.23.005(a)(2)-(3).

⁴ AS 01.10.055(c); AS 43.23.095(7).

⁵ 15 AAC 23.163(f).

⁶ 15 AAC 05.030(h).

during the qualifying year, much less that she maintained her residency all through the decade of her absence. The record does not show where Ms. R. has been living. Though she claims to have returned to Alaska to reside in 2007, the record contains no more than the most cursory written comments about the circumstances of her return, her living situation, or her intent to return to Alaska during the lengthy period of her absence. The evidence in the record does not rebut the legal presumption that Ms R. is no longer an Alaska resident.

IV. Conclusion

Ms. R. has not met her burden of rebutting a legal presumption that she is no longer an Alaska resident. The division was correctly following the law when it made the decision to deny Ms. R.'s application. The decision to deny the application of S. R. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 22nd 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.]