

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

IN THE MATTER OF )  
 )  
 M. B. )  
 ) Case No. OAH 09-0130-PFD  
 )  
2007 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

M. B. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. B. was not eligible. Mr. B. requested a formal hearing by written correspondence only. A preponderance of the evidence in the record shows that Mr. B. is not eligible for a 2007 dividend.

**II. Facts**

Mr. B. was in Arizona for 359 days in 2006, where he was receiving postsecondary education on a full-time basis.

On his supplemental schedule, Mr. B. answered “not sure” to the question, “are you returning to Alaska to remain indefinitely.”<sup>1</sup> To a question asking when he would return to Alaska, Mr. B. replied, “not sure.” In his informal appeal, Mr. B.’s mother wrote on Mr. B.’s behalf that he had provided these answers “innocently, and truthfully, as a college kid who honestly hoped, but had no idea at that moment, whether he’d get his job in Alaska.”<sup>2</sup>

In his formal hearing request, Mr. B. stated that “‘not sure’ doesn’t mean ‘no.’ And ‘yes’ could mean a lie and consequences.” In an attached statement, Mr. B. wrote in part,

College students should be given a grace period immediately following graduation as few know exactly what they are going to do the day after graduation. In no way did I want to remain in Arizona. I was a typical college graduate struggling to figure things out, not expecting any more handouts from my single mother. I was technically an adult, but still new at it, and it is not a sin to have your mother help you fill out your application. It was the fear of consequences you threaten in your application that resulted in our answer of “not sure”, which isn’t even a box to check, so why are you considering it? Didn’t your computer reject the application for just that reason? She knew I was coming back, she just didn’t know when.... There is no way you can prove that I have not had this intention all along, and especially in March 2007. My longtime girlfriend and I are returning this summer 2009, to our principle [sic] home town of Ketchikan; she has a job, and I will be

---

<sup>1</sup> Mr. B.’s application was filled out by his mother with his permission.

<sup>2</sup> Exhibit 6, page 7.

making plans for our move to Anchorage. I am looking into a law enforcement position as an Alaska State Trooper or A.D.F.G. wildlife protection officer.

### 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 also at the date of application.<sup>3</sup> Alaska residency is governed by AS 01.10.055:

- (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.
- (b) A person demonstrates the intent required under (a) of this section
  - (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and
  - (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.
- (c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

According to 15 AAC 23.173(i), “the burden of proof rests on an individual claiming an allowable absence to prove that the individual has maintained, at all times during the absence, the intent to return and remain indefinitely in Alaska.” At a formal hearing, the person requesting the hearing has the burden of proving that the division’s decision was made in error.<sup>4</sup>

Mr. B. appears to argue both that he did intend to return to Alaska to remain indefinitely at all times, and that as a young college student starting out in life, he had not decided whether he would be returning to Alaska, as he had yet to secure a job and establish a career in Alaska.

An Alaska resident who is physically present in Alaska will remain a resident until affirmatively deciding to move away from the state at a specific time. During the uncertain period when a young person is thinking about the future and considering moving away from Alaska, that person remains an Alaska resident. Students attending college out of state are often uncertain of what their futures will bring, and it is not uncommon for students to candidly admit that, while they plan to return to Alaska after graduating, they are open-minded about opportunities that might arise

---

<sup>3</sup> AS 43.23.005(a)(2)-(3).

<sup>4</sup> 15 AAC 05.030(h).

elsewhere. So long as their intent remains to return to Alaska upon graduation, open-mindedness about a future elsewhere is not enough to sever Alaska residency. But if a student abandons the intent to return to Alaska, the remaining possibility that the student might yet return upon receiving a satisfactory job offer is not enough to say that the person has maintained the intent at all times to return to Alaska to make a home. This is true regardless of how much the person might love Alaska. Wanting to return and intending to return are not the same.

While Mr. B. argues that the division cannot prove he lacked the intent to return to Alaska, under the law it is Mr. B.'s burden to prove that at all times during the qualifying year and up to the date of application he affirmatively maintained the intent to return to Alaska to make his home, even if he could not be absolutely certain where life would take him. Mr. B. declined to testify at a hearing and answer questions about his intent, and other than his unsworn written statement and the statements of his mother, there is very little evidence in the record. Mr. B.'s statement addresses his dissatisfaction with the manner in which the division has handled his case and his belief that there are many other people who obtain PFDs fraudulently, but there is very little information available to a person attempting to determine what Mr. B.'s plans and intent were in 2006 and when his mother filled out his application in 2007.

Based on what information is available, it appears more likely than not that in 2006 Mr. B.'s intent was to move wherever he obtained a job after he graduated, and that he did not have the specific intent to return to Alaska, even though he loved Alaska and was open to returning if he were able to find a job in the state. A person in this situation is not an Alaska resident and is not eligible for permanent fund dividends.

#### **IV. Conclusion**

Because he has not met his burden of proving that all times during the qualifying year he maintained the intent to return to Alaska to remain indefinitely and to make his home, Mr. B. is not eligible for a 2007 dividend. The decision of the Permanent Fund Dividend Division to deny Mr. B.'s application for a 2007 permanent fund dividend is AFFIRMED.

DATED this 2nd day of July, 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 13th day of August, 2009.

By: Signed  
Signature  
Virginia Blaisdell  
Name  
Director, Administrative Services Division  
Title

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