

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

IN THE MATTER OF)	
)	
R. M.)	
)	Case No. OAH 09-0147-PFD
<u>2007 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

R. M. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. M. was not eligible. Mr. M. requested a formal hearing by written correspondence only. Mr. M. has provided a great deal of evidence and correspondence with the assistance of K. C., who has represented him by duly executed power of attorney.

Because Mr. M. maintained his principal home in another state during the qualifying year, he is not eligible for a 2007 dividend.

II. Facts

For many years, Mr. M. lived aboard his 25-foot fiberglass boat in Juneau and worked for the Alaska Marine Highway system. In 1999 Mr. M. suffered a serious workplace injury with complications that were apparently subtle in manifestation and difficult to diagnose and treat. After exhausting the expertise of the Juneau medical community, Mr. M. sought treatment in Maryland and California without success. Mr. M. was eventually referred to physicians in Seattle where, after more complete diagnoses, Mr. M. has apparently had some success with treatment. Nevertheless, the long recovery process is ongoing. Mr. M. ultimately lost his job in 2002, and he has been spending a great deal of time in Seattle receiving continuous medical treatment since August of 2004.

At some point, Mr. M. put most of his tools, clothes, papers and photos, and other personal belongings into a storage facility in Juneau that he has rented since at least 1999. In December of 2006, at the request of the Juneau harbormaster, Mr. M. had his boat removed from the water and placed into storage on land. Mr. M. was absent from Alaska for 290 days in 2006. While he is in the Seattle area, Mr. M. stays in an apartment maintained by Ms. C.

Mr. M.'s condition appears to have a serious psychological or neurological component. Mr. M. is currently rated as totally disabled, at least temporarily. Mr. M. continues to vote in Alaska. The evidence indicates that Mr. M. deeply loves Alaska, and would return immediately if his condition allowed. The best assessment of Mr. M.'s intent appears to be that Mr. M. intends to return to Alaska when he is able, but at this point he cannot say when or, possibly if, he will be able to return. Ms. C. aptly characterizes the state of Mr. M.'s intent in her concluding statement that "the world is not black and white."

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must be an Alaska resident during the entire qualifying year and at the date of application. A person who establishes residency in Alaska remains a resident during an absence from the state, unless the person establishes or maintains residency in another state, or performs other acts or is absent under circumstances that are inconsistent with the intent to remain in Alaska indefinitely and to make a home in the state.¹

In determining Mr. M.'s residency, it is important to avoid confusing desire with intent. There appears to be little doubt that Mr. M.'s desire is to return to Alaska immediately and to make his home in the state, and that he would do so if he could. But it is reasonable to conclude that a person does not intend to do what he is unable to do, no matter how much he wishes to.

Although he would like to return to Alaska, at this point the unavoidable facts are that Mr. M. spends most of his time in another state and will probably continue to do so for an indefinite period. Although he has his boat and personal belongings in storage in Juneau, it appears most correct to say that at this point Mr. M. lives in Washington with Ms. C. At this time, and on the date of his application for a 2007 dividend, Mr. M. was living in Washington under circumstances that are inconsistent with the intent to remain in Alaska indefinitely and with the intent to make a home in Alaska.

¹ AS 01.10.055.

IV. Conclusion

At his date of application for a 2007 permanent fund dividend, Mr. M. was not an Alaska resident. The division’s decision to deny Mr. M.’s application for a 2007 permanent fund dividend is affirmed.

DATED this 17th day of August, 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 16th day of September, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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