

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

IN THE MATTER OF)
)
 C. D.)
) Case No. OAH 09-0152-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

C. D. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. D. was not eligible, and it denied the application initially and at the informal appeal level. Mr. D.’s mother, E. D., and his father, K. D., appeared by telephone at a formal hearing held on April 20, 2009. Ms. D. represented C. D. by power of attorney. PFD Specialist Peter Scott represented the division.

Because Mr. D. was not an Alaska resident at the date of application, the division’s decision is affirmed.

II. Facts

Mr. D. was born and raised in Fairbanks, where his parents still live. In 2007, Mr. D. had a girlfriend he had met while in Washington State. In the fall of 2007 Mr. D. had just turned 22 and was still living with his parents. After a great deal of thought and discussion with his parents, Mr. D. decided that he would go to Seattle, live with his girlfriend, and find a job. Mr. D. left for Seattle on October 5, 2007. When he first arrived in Seattle, Mr. D. was living with his girlfriend in a house she rented with two other roommates while attending the University of Washington. The couple decided they should rent their own apartment, or that Mr. D. should get his own apartment and the couple would decide later whether his girlfriend would move in. Mr. D. rented an apartment on December 1, 2007, with occupancy to begin on December 15. When Mr. D. and his girlfriend began having disagreements around December 11, Mr. D. went to stay at a friend’s house. On December 15, 2007, Mr. D. and his girlfriend broke up and Mr. D. moved into his apartment.

Because Mr. D. did not testify at his hearing, his intent when he left Alaska can only be inferred from his actions and the observations of his parents, who did testify. It appears that one of the reasons Mr. D. went to Seattle was to test the viability of his relationship with his girlfriend, which Mr. D. hoped would develop into a more serious relationship and perhaps eventually lead to marriage.

When he moved into his own apartment in December, 2007, Mr. D. had obtained a job working for a firm called ADS E. through a staffing service called Aerotek. This was a temporary contract to last until at least April 30, 2008. Mr. D. actually worked through Aerotek from October 31, 2007, until June 20, 2008.

On May 15, 2008, Mr. D. interviewed for a job with F. M., and he was offered a position that day as a seasonal employee at Red Dog Mine. Mr. D.'s official start date with F. was June 28, 2008. Mr. D. gave up his apartment in Seattle, though he was required to pay rent through July, 2008.

Mr. D.'s job at F. involves two distinct seasons. During the summer mining season from approximately July through October, depending on ocean ice, Mr. D. works at Red Dog Port, about fifty miles from the mine, where he assists in lightering ore to ships. From approximately January through June Mr. D. works in Seattle performing off-season maintenance on the barges at a F. M. shipyard facility. Around October of 2008, Mr. D. went to visit his parents in Fairbanks for about a week before he was required to work in Seattle tending barges as they arrived from Kotzebue for the winter. Mr. D. then had about six weeks off work. He went back to Fairbanks for the Christmas holidays for about two weeks, and then was called back to Seattle around the last week of December. When he is in Seattle, Mr. D. now rents a room in a house owned by a friend of his who also works for F. M.

Ms. D. testified that Mr. D. enjoys his current job and the people he works with. She stated that if the position were to be made year-round, she would not be surprised if Mr. D. stayed with F. There is no evidence that Mr. D. intends to quit working for F., even if the job remains seasonal.

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.¹ 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

¹ AS 43.23.005(a)(2)-(3).
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(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.

It is clear, and there is no dispute, that Mr. D. had established residency in Alaska before he left the state in 2007. Under subparagraph (c) above, the issue in this case is whether Mr. D. was absent under circumstances that are inconsistent with the intent to remain in Alaska indefinitely and to make his home in Alaska. As the person who requested the formal hearing, Mr. D. has the burden of producing evidence showing that the division's decision was in error.²

Because Mr. D. did not personally testify at his hearing, his intent when he left Alaska must be inferred from his actions and the hearsay statements of people who know him and have talked to him. It appears safe to say that when Mr. D. went to Seattle in 2007 there was a great deal of uncertainty about where life would take him, as is often the case with young adults moving away from their parents' homes for the first time. But it also seems safe to say that, while Mr. D. could not know for certain what would happen, he did know what he hoped would happen in Seattle: his relationship would flourish and become permanent, he would find permanent work that he enjoyed, and he would ultimately establish himself as a self-supporting adult in Seattle. Mr. D. pursued these goals in Seattle, and while there was always a possibility he might return to Fairbanks if things did not work out, he did not make plans to return to Alaska or pursue employment in Alaska until he applied for the position with F. M., and then only on a seasonal basis for the shorter part of the year. Things might not have turned out exactly as Mr. D. planned, but it cannot be said that he failed; he now lives as an adult on his own terms, and he supports himself with employment he enjoys. His relationship might not have gone as Mr. D. hoped, but he is still young and on good terms with his former girlfriend, whom he communicates with regularly.

While Mr. D.'s future was uncertain at the end of 2007 and early in 2008, and there was a possibility of his return to Alaska to remain indefinitely if things did not go well, the circumstances of his absence were inconsistent with the intent to return to Alaska to make his home and remain indefinitely. Mr. D. secured housing in Seattle in 2007, he secured employment in Seattle in 2007, he was actively seeking greater stability and permanence in Seattle, and he was not making any

² 15 AAC 05.030(h).
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particular effort to establish a future in Alaska. While he could not be certain of success in Seattle, Mr. D. had no reason to expect failure either. Mr. D.'s actions indicate that his intent in the last two months of 2007 was to make his home in Seattle and to remain there indefinitely. He had housing and a job, and he never did return to Alaska, except to work in a remote facility for four months out of the year, and for three weeks out of the year to visit his parents. These circumstances are not consistent with the intent to return to Alaska to remain indefinitely and to make a home in this state.

Ms. D. argues that at least in 2007 and early in 2008 Mr. D.'s principal home was his bedroom in his parents' house in Fairbanks. At this time, Mr. D. was a self-supporting 22-year-old adult occupying an apartment that he had rented himself, with no specific plans to move back into the bedroom of his childhood home. Under these circumstances, Mr. D.'s principal home is best regarded as his Seattle apartment, not the bedroom in his parents' house.

Ms. D. further argues that there are many people in Alaska with vague intentions about their futures who qualify for dividends, even though they are not sure how long they might remain in the state. While Ms. D. is correct on this point, these individuals differ in their circumstances from Mr. D. The difference is whether the person is physically within the state or out of state. A person physically in Alaska with no firm intention to stay or leave remains a state resident until making an affirmative decision to leave at a specific time to a specific place, at which point the person becomes ineligible for a dividend even though still physically in the state.³ But a person who is physically outside of the state without the affirmative intent to return to Alaska to make a home is not an Alaska resident, even if there is a chance the person may return to Alaska some day if things don't work out or if the person changes his mind.

In the last two months of 2007 Mr. D. was in another state, not knowing when or if he would return to Alaska. To the extent it is possible to determine Mr. D.'s intent, it appears more likely than not that his intent when he left Alaska was to leave Alaska and his parents' home, go out in the world, and build a life for himself as an independent adult in Seattle. It is to his credit that Mr. D. is succeeding, but it also means that he is no longer eligible for permanent fund dividends.

IV. Conclusion

Mr. D. ceased to be an Alaska resident in October of 2007. Because he was not an Alaska resident during the entire qualifying year, Mr. D. is not eligible for a 2008 permanent fund dividend.

³ 15 AAC 23.143(d)(h).
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The division's decision to deny Mr. D.'s application for a 2008 permanent fund dividend is
AFFIRMED.

DATED this 18th day of June, 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 21st day of July, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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