

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

In the Matter of :)	
)	
K. R. F.)	
)	OAH No. 09-0249-PFD
<u>2008 Alaska Permanent Fund dividend</u>)	DOR No. 2008-044-6020

DECISION

I. Introduction

K. R. F. filed a timely application for a 2008 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application on the grounds and that she had maintained her principal home in another state and accepted full-time permanent employment there, and that she did not meet the statutory definition of a “state resident” through the date of application.¹

Ms. F. filed a timely appeal which was referred to the Office of Administrative Hearings for a hearing by correspondence.

Because Ms. F. accepted full-time permanent employment in another state, and did not show by a preponderance of the evidence that the division’s decision was in error, the division’s decision is sustained.

II. Facts

From the age of 18, in 2004, until the fall of 2007, K. F. lived with her parents in Fairbanks, while working full time at C.C. & T. That summer, her parents divorced. Ms. F.’s father was working on a long-term contract in Afghanistan, and her mother decided to relocate to Arizona.

Ms. F. decided to accompany her mother to Arizona to help her get settled. Ms. F. stored her vehicle and the majority of her household belongings at her father’s home in Fairbanks.² She maintained her Alaska bank account and voter registration. Ms. F. left Alaska on August 15, 2007, and moved into her mother’s home in No Name City, Arizona. In October, 2007, Ms. F. she accepted a full-time position at B. M. C. in Mesa, Arizona, planning on leaving the job and returning to Alaska in the spring of 2008.

¹ Ex. 6, p.1.

² Ex. 3, p. 3 (Question 4).

On January 21, 2009, Ms. F. filed an on-line application, including the supplemental schedule and signature page, for the 2008 Alaska Permanent Fund dividend.³ She did not return to Alaska in the spring of 2008, as she had planned, and the division requested additional information about her eligibility for the dividend, which Ms. F. submitted on July 15, 2008.⁴

The division initially denied the application on July 16, 2008,⁵ and Ms. F. requested an informal conference. By December, 2008, Ms. F.'s father had sold his house in Alaska; he had extended his contract in Afghanistan and was not going to be returning to Alaska.⁶ The division sustained the denial of the application in an informal conference decision issued on March 31, 2009.⁷ By that time, Ms. F. was attending nursing school in Arizona and she did not plan on returning to Alaska until after completing her studies.⁸

III. Discussion

On appeal, the division contends that Ms. F. is ineligible for the 2008 dividend because: (1) she engaged in disqualifying actions by (a) maintaining her principal home in another state; (b) accepting full-time employment in another state; and (2) she did not retain the intent to return to Alaska and remain indefinitely throughout the qualifying year (2007).⁹

A. Ms. F. Engaged in a Disqualifying Activity

In addition to establishing Alaska residency and maintaining the intent to return to Alaska and remain indefinitely, an individual must meet the eligibility requirements established by the applicable regulations.¹⁰ 15 AAC 23.143(d)(1)-(17) specify a variety of specific actions that render an Alaska resident ineligible for a dividend. In this case, the division asserts that Ms. F. is ineligible under 15 AAC 23.143(d)(1) and (4).

³ Ex. 1.

⁴ Ex. 3.

⁵ Ex. 4.

⁶ Ex. 5, p. 3; Ex. 7, p. 3.

⁷ Ex. 6.

⁸ Ex. 5, p. 3.

⁹ Position Statement at 3. The position statement also notes that Ms. F. moved from Alaska in 2007.

However, moving out of state is not a disqualifying act unless the applicant claims moving expenses in a tax return. 15 AAC 23.143(d)(10)(B).

¹⁰ In a number of prior cases, the Alaska Supreme Court has upheld regulations restricting eligibility for a permanent fund dividend beyond the specific statutory requirements of AS 43.23.005(a) and AS 43.23.008. *See Church v. State, Department of Revenue*, 973 P.2d 1125 (Alaska 1999); *Brodigan v. Alaska Department of Revenue*, 900 P.2d 728 (Alaska 1995); *State, Department of Revenue, Permanent Fund Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *State, Department of Revenue, Permanent Fund Division v. Cosio*, 858 P.2d 621 (Alaska 1993).

1. *Principal Home*

15 AAC 23.143(d)(1) provides that an otherwise eligible applicant is disqualified if, at any time from the beginning of the qualifying year through the date the application is complete, the applicant has “maintained the individual’s principal home in another state,” except while absent for specified reasons, such as attending college or serving in the military.¹¹ Because none of the reasons apply, Ms. F. is ineligible for the 2008 dividend if she maintained her principal home in Arizona at any time from the time she arrived there until July 15, 2008.

Throughout the time she has been living in Arizona, Ms. F. has lived in her mother’s home. When she initially moved, the majority of her personal belongings (including a vehicle) were stored at her father’s home in Fairbanks, and there is no indication in the record that any of those belongings have been disposed of or sent to Arizona. However, Ms. F. remained in her mother’s home from August, 2007, through the time of hearing in August, 2009. There is no indication of the quantity or nature of the belongings she stored at her father’s home, and it is entirely possible that while living with her mother Ms. F. acquired at least as much in the way of personal belongings as she had stored at her father’s house. Ms. F.’s application form at one point states that her principal home is in Alaska, and at another, states that her principal home is in Arizona.¹² Ms. F. has not shown, by a preponderance of the evidence that the division erred in finding that she maintained her principal home in Arizona for at least some period of time before her application was complete.

2. *Full-Time Permanent Employment*

15 AAC 23.143(d)4) provides that an otherwise eligible applicant is disqualified if at any time from the beginning of the qualifying year through the date the application is complete, the applicant has “accepted full-time, permanent employment in another state,” except while absent for specified reasons.¹³ Because none of the specified reasons applies, Ms. F. is ineligible for the 2008 dividend if she accepted full-time employment in Arizona at any time from the time she arrived there until July 15, 2008.

Shortly after she arrived in Arizona, Ms. F. went to work for A. C. at H..¹⁴ After about a month, she left that job and in November, 2007, she accepted full-time employment at B. H..¹⁵

¹¹ See 15 AAC 23.143(d)(1)(A), (B).

¹² Ex. 2, p. 3 (Questions 6A, 7A).

¹³ See 15 AAC 23.143(d)(4)(A), (B).

¹⁴ Ex. 3, p. 7.

¹⁵ Ex. 3, p. 7.

Ms. F. asserts that she accepted the latter job intending to keep it only until she returned to Alaska in the spring of 2008. However, after she abandoned the plan to return in the spring, Ms. F. remained with B. H. This indicates that the position Ms. F. accepted with B. H. was a permanent one: the only thing temporary about it was that Ms. F. intended to quit it and return to Alaska. But while accepting permanent full-time employment with the intent to quit and return to Alaska may be sufficient to retain Alaska residency, it does not make the position in which the individual was employed a temporary one. Absent a showing that a position is temporary in nature, or that the employer has agreed to a temporary term in an otherwise permanent position, employment is “permanent” for purposes of 15 AAC 23.143(d)(4) even if the person who takes the job plans on leaving it after a definite period of time.¹⁶ The preponderance of the evidence is that Ms. F. accepted full-time, permanent employment in Arizona when she went to work for B. H.

B. Intent to Return to Alaska and Remain Indefinitely

AS 01.10.055(c) provides that an Alaska resident severs residence in Alaska if the person, while absent from the state, performs acts or is absent under circumstances that are inconsistent with the intent to return to Alaska and remain indefinitely. The division contends that the Ms. F.’s actions are inconsistent with the intent to remain a resident of Alaska.

Leaving Alaska for an extended period of time is not always inconsistent with an intent to return to Alaska and remain indefinitely: it is common for Alaskans to leave on extended winter visits to warmer climates, and it is not at all unusual for an adult child to leave the state for an extended period to help out an aging parent, or to attend school (as Ms. F. is doing). Similarly, accepting full-time employment is not always inconsistent with an intent to return to Alaska and remain indefinitely: an individual who is absent for an extended but determinate period of time has to earn a living, and a permanent job may be the only one available. In any event, under Alaska law in determining residency an individual’s actions are considered in light of all of the circumstances.¹⁷

In this case, it is entirely possible that Ms. F. retained the intent to return to Alaska and remain indefinitely through July 15, 2008. However, it is not necessary to decide whether or not

¹⁶ See, e.g., In Re S.E., OAH No. 08-0150-PFD (Department of Revenue, August 6, 2008).

¹⁷ See AS 43.23.015(a) (“The commissioner shall consider all relevant circumstances in determining the eligibility of an individual.”); 15 AAC 23.143(a) (the division will “consider” an individual’s actions).

she in fact did retain that intent, because she is ineligible for the 2008 dividend even if she remained an Alaska resident.

IV. Conclusion

Ms. F. accepted full time permanent employment in Arizona prior to the date her application was complete. In addition, Ms. F. did not show that the division erred in finding that she maintained her principal home in Arizona prior to the date her application was complete. For these two separate reasons, Ms. F. is ineligible for the 2008 dividend. It is therefore not necessary to determine whether she has remained an Alaska resident. The division's decision to deny her application is AFFIRMED.

DATED September 16, 2009

Signed _____
Andrew M. Hemenway
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 October.

By: *Signed* _____
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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