

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

IN THE MATTER OF)
)
 K. G. and her)
 children I. & A. G.)
) Case No. OAH 09-0257-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

K. G. timely applied for 2008 permanent fund dividends for herself and on behalf of her two children I. and A. The Permanent Fund Dividend Division (“the division”) determined that Ms. G. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. G.’s request, a formal hearing was held on June 15, 2009. Ms. G. appeared by telephone. PFD Specialist Kim Colby represented the PFD Division by telephone.

Ms. G. and her children continue to be Alaska residents. They were not unallowably absent during the qualifying year. They did not maintain their principal home in another state. The applicants are eligible for 2008 dividends.

II. Facts

Ms. G. and her husband are long-time Alaska residents. Mr. G., who is not a party to this case, moved to Alaska at the age of five and had lived in Alaska for 26 years, and has family in Alaska; Ms. G. was born and raised in Alaska and until 2007 had never lived anywhere else.

In 2006 Mr. G. lost his job working for the Anchorage School District. With two children to support, Mr. G. decided to join the army in order to acquire some skills that would make him more employable. In December of 2006, Mr. G. left Alaska for basic training. The family gave up the apartment they had been living in, and Ms. G. and the children moved in with Mr. G.’s mother, who also lives in Anchorage. For most of 2007 the Army was moving Mr. G. to various places around the country for training purposes. Late in 2007, the Army assigned Mr. G. to a duty station at Fort Lewis in Washington State. On October 2, 2007, Ms. G. and the children went to Washington State to join Mr. G. For about twelve days the family stayed at the Fort Lewis Lodge, a hotel near the base. The G.s applied for post housing, but because it was not immediately available the family moved into an apartment in Puyallup. Two months later post housing became available, and the family moved onto the base. At the time of the hearing in June, 2009, Mr. G. was preparing for

deployment to Iraq for a one-year period. Ms. G. testified that in July or August of 2009 she and the children would be moving back to Alaska where they would again live with Mr. G.'s mother. When Mr. G.'s four-year commitment to the Army is completed in 2010, he will also be returning to Alaska and the family will be reunited.

III. Discussion

The division asserts that Ms. G. is ineligible because she is no longer an Alaska resident, because she was unallowably absent during the qualifying year, and because she maintained her principal home in another state during the qualifying year or at the date of application. The division is incorrect on these points.

a. Ms. G. and the children are still Alaska residents.

There is no dispute that the applicants were Alaska residents before they departed the state in October of 2007. The division writes that

Mrs. G. is not eligible to receive the 2008 dividend. Mrs. G. is unallowably absent with an ineligible individual who did not file a timely 2008 PFD application, she moved from Alaska, thus severing her ties, and she took an action inconsistent with the requisite intent to remain in Alaska indefinitely and to make a home in the state by maintaining her principal home in another state during her absence and therefore did not meet the definition of "state resident" as it applies to the Permanent Fund Dividend program during all of calendar year 2007, the qualifying year for the 2008 dividend, and on the date of application.

A person who has established residency in Alaska remains a state 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 to remain in Alaska indefinitely and to make a home in the state.¹

The evidence is clear, and not seriously disputed, that Ms. G. went to Washington with the intent to stay with her husband for the temporary period of about twenty months that he would be stationed in Washington, and that she would then return to Anchorage. The division states that "she moved from Alaska, thus severing her ties." In fact, Ms. G. does not appear to have severed any of her ties to Alaska. She is still registered to vote in the state, she maintains an Alaska driver's license, and has maintained family ties sufficiently strong that she and her children are welcome to move back into her mother-in-law's Anchorage home whenever they want. In contrast, other than her temporary presence there, Ms. G. does not appear to have established any significant ties to Washington State.

¹ AS 01.10.055(c).
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The division argues that an act or circumstance has automatically acted as a trigger to terminate Ms. G.'s status as an Alaska resident, and that the case presents an issue of law. However, the essential issues appear to be more in the nature of questions of fact. The relevant factual inquiry is whether Ms. G. plans to come back to Alaska to make her home, or whether she intends to stay indefinitely in Washington or somewhere else. There are no circumstances that are inconsistent with Ms. G.'s testimony that her stay in Washington is temporary and that she plans to come back to Alaska in the summer of 2009 to remain indefinitely and make her home. Ms. G. has not performed any acts inconsistent with her stated intent to return to Alaska. She is an Alaska resident and has been since she was born.

b. Ms. G. was not unallowably absent during the qualifying year.

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only be absent as allowed by AS 43.23.008.² That statute provides a number of reasons and circumstances under which a person may be absent from Alaska during the qualifying year and still receive a dividend.

In its position statement, the division asserts that

Individuals who are spouses, minors, or disabled dependents of active duty military members who are stationed in another state or country, to be considered allowably absent, they must be absent with an individual who is an eligible Alaska resident....

The division cites no authority for this proposition, and none can be found. There is no restriction on spouses of military members that requires them to be with an eligible spouse to claim an allowable absence. Ms. G. could be absent attending college, working as a congressional aide, receiving continuous medical treatment, settling the estate of a parent, competing in the Olympics, or taking advantage of other allowable absence provisions. Whether her spouse is in the military, is himself eligible for a dividend, or is with her at the time of the absence is irrelevant. It is true that she cannot claim an absence to accompany an eligible spouse on active duty, since Mr. G. was not eligible in 2008 because he did not submit an application. But not being able to claim one kind of allowable absence does not prohibit a military spouse from independently claiming another kind of allowable absence.

AS 43.23.008(a)(17)(A) provides an allowable absence for anyone who was absent from the state for less than 180 days in the qualifying year, so long as the absence was consistent with the individual's intent to remain a state resident. Ms. G. left Alaska on October 2 of the qualifying

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year. Her absence during the qualifying year was therefore well under 180 days. Her intent to stay with her husband during the time he was stationed at Fort Lewis before returning home to Anchorage was entirely consistent with the intent to remain an Alaska resident.

c. Ms. G. did not maintain her principal home in another state or country.

An individual is not eligible for a dividend if, during the qualifying year or at the date of application, the individual has maintained her principal home in another state, except while absent for certain allowable reasons that do not apply to this case.³ In its position statement, the division writes,

Mr. and Mrs. G. moved from Alaska to Washington as Mr. G. received military orders for a Permanent Change of Station (PCS). In moving, their household belongings were shipped to Washington, and therefore Mr. and Mrs. G. were no longer maintaining their principal home in Alaska nor storing their household belongings in Alaska...[B]ecause she's not allowably absent, in order for her to be considered an eligible Alaska resident for PFD purposes, she would have to be maintaining her principal home or storing her household belongings in Alaska during her absence, which she is not.

The division has not cited any statute, regulation or case to support the proposition that a person must store household belongings in Alaska during an absence to qualify for a dividend. A search of the applicable law reveals no such provision. Neither does a search of the law reveal a requirement that an absent resident maintain a principal home in Alaska. The only reference to a "principal home" is in 15 AAC 23.143(d)(1). That regulation generally disqualifies applicants who maintain a principal home outside of Alaska, but it does not impose a duty to maintain a principal home inside the state.

In a previous case, the Commissioner of Revenue overturned a hearing officer's determination that the applicant had maintained his principal home in a house he owned in Washington State, when the applicant was living in the house and had not maintained a dwelling or stored any belongings in Alaska during the absence.⁴ The Commissioner's decision on reconsideration stated that

Disqualification under 15 AAC 23.143(d)(1) occurs when the individual establishes or maintains a residence outside the state under circumstances that demonstrate the residence is the individual's primary home. The failure to maintain an interest in residential property in Alaska during an allowable absence, however, does not necessarily make that individual's temporary, out-of-state living situation his or her primary home. Not everyone has a primary home at all times. One can be homeless or living somewhere temporarily.... The fact that applicants do not, at any particular moment, have an empty residence in Alaska waiting for their return does not make wherever they are at any given moment their primary home. The

³ 15 AAC 23.143(d)(1).

⁴ *In the Matter of Jones*, Caseload no. 990017 (Dept. of Revenue, January 2000).

regulation does not require that a “principal home” be maintained in Alaska, and the lack of such a residence should not be held against an applicant absent other evidence to the contrary. An Alaskan's living situation during an absence for an allowable reason does not constitute establishment of a primary home unless the living situation demonstrates that the individual no longer has the requisite intent for Alaska residency.

Ms. G.'s housing situation while she was in Washington consisted of about twelve days in a hotel, two months in a Puyallup apartment while she waited for post housing to become available, and the remainder of the time in military-provided post housing on the Fort Lewis army base. All of these residences were temporary in nature and consistent with Ms. G.'s intent to return to Alaska to remain indefinitely after Mr. G. was deployed to Iraq. Ms. G. did not maintain a principal home in Washington during her absence from Alaska.

d. I. and A. are eligible Alaskans.

The division asserts that “I. and A. do not have an appropriate eligible sponsor and therefore are not eligible.” Children cannot be paid dividends directly; their dividends must be paid to an adult.⁵ 15 AAC 23.113 provides a number of rules for determining who will be the “sponsor,” or the adult to receive the check on behalf of the child. Normally the child's parent will be the sponsor, but, when there is a need, any eligible individual can serve as a sponsor.⁶

Before determining who should serve as a child's sponsor, the first inquiry should be whether the child is eligible. I. and A.'s situation appears to be identical to Ms. G.'s. Since Mr. and Ms. G. intended to return the children to Alaska to remain indefinitely, the children have maintained their Alaska residency. Their absences were less than 180 days in the qualifying year, and they did not maintain their principal home anywhere outside of Alaska.

Because the children are eligible, there is a need to identify a suitable sponsor for them. The need does not present an issue in this case, however, because Ms. G. is eligible and is therefore an appropriate sponsor.

IV. Conclusion

This case presents a somewhat unusual situation, in that Ms. G. was accompanying somebody whose application was denied. Often, in such a situation, it can be shown that the entire family is ineligible for the same reasons. However, Ms. G.'s case and the case of the children must be evaluated on their own merits. The evidence shows that Ms. G. is eligible for a 2008 dividend.

⁵ AS 43.23.005(c);

⁶ 15 AAC 23.113(g).

I. and A. are eligible for 2008 dividends, and Ms. G. is a suitable sponsor for them. The applications of K. G., I. G., and A. G. for 2008 dividends shall be granted.

DATED this 29th day of September, 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 27th day of October, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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