

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

In the Matter of :)	
)	
A. K.)	
)	OAH No. 09-0286-PFD
<u>2008 Alaska Permanent Fund dividend</u>)	DOR No. 2008-050-1634

DECISION

I. Introduction

A. K. filed a timely application for a 2008 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application on multiple grounds.¹ Mr. K. filed a timely appeal which was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on June 24, 2009. Mr. K. testified, and Kimberly Colby represented the division.

Because Mr. K. did not establish residence in Alaska prior to January 1, 2007, he is ineligible for the 2008 dividend. Therefore, the division's decision is sustained.

II. Facts

In 2004, A. K., then aged 24, was living with his mother in Florida. Mr. K.'s sister, who had moved to Alaska in 1994 and was living in Seward, invited him to come up for a visit. Mr. K. first came to Alaska that summer. He stayed with his sister and found a seasonal job. He didn't return for the 2005 season, but in 2006 he came back and again lived with his sister while working at a seasonal job. At the end of the summer, Mr. K. returned to his home in Florida.

At some point after his arrival in Alaska in 2006 and before January 1, 2007, Mr. K. decided to make a permanent move to Alaska after his return to Florida for the winter of 2006-2007. Towards the end of 2006, he started making plans to drive to Alaska in the spring. In January, 2007, he arranged for a job upon his arrival. Later, he located an apartment and made a security deposit.

Mr. K. drove up from Florida at the end of April, 2007. After he arrived in early May, he started work at his new job. By the end of the year he had found permanent employment and was living in Anchorage. Mr. K. continued living and working in Anchorage until September, 2008. At that time he vacated his apartment in Anchorage and flew to Florida, where he spent

the winter with his mother, who was suffering from a variety of physical ailments and needed help around the house. In the spring of 2009, Mr. K. returned to Alaska, where he again found a seasonal job and lived with his sister in Seward.

III. Discussion

In order to be eligible for an Alaska Permanent Fund dividend, an individual must establish residency in Alaska prior to January 1 of the qualifying year.² On appeal, the division contends that Mr. K. is ineligible for the 2008 dividend because he did not establish residency prior to January 1, 2007, the qualifying year for the 2008 dividend.

AS 01.10.055 establishes the statutory test for establishing residency in Alaska for purposes of the Alaska Permanent Fund dividend program.³ AS 01.10.055(a) states:

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.

As this statute provides, and as has been expressly stated in a regulation, a person cannot establish residency without being physically present in the state.⁴ Furthermore, physical presence in the state coupled with the intent to remain is insufficient in itself to establish residency for purposes of the Alaska Permanent Fund dividend: prior to January 1 of the qualifying year, “an individual must have taken at least one step beyond physical presence in Alaska to establish residency.”⁵

Mr. K. was a resident of Florida when he came up to Alaska for the first time in 2004, and he remained a resident of Florida when he returned to Alaska in 2006. If Mr. K. did not decide to remain in Alaska indefinitely before he left the state at the end of the 2006 season, then he is ineligible for the 2008 dividend because prior to January 1, 2007, he was not physically present in Alaska with the intent to remain indefinitely: in 2006 he was in Alaska but he had not yet decided to remain indefinitely.

Mr. K.’ testimony regarding the date when he decided to remain in Alaska indefinitely was inconsistent. At one point, he testified that he made that decision in January, 2007. At another point, he testified that he made it before he returned to Florida at the end of the 2006 season. Because Mr. K. did not provide clear, consistent and unequivocal testimony that he had

¹ Ex. 6, p. 1.

² AS 43.23.005(a)(2).

³ See AS 43.23.095(7).

⁴ 15 AAC 23.143(b) states: “An individual may not become a resident of Alaska while absent from Alaska.”

decided to remain in Alaska indefinitely before he left the state at the end of the 2006 season, he has failed to show by a preponderance of the evidence that the division's decision was erroneous.

More fundamentally, even if Mr. K. decided, before he left Alaska at the end of the 2006 season, to leave for the winter and return to in the spring and remain indefinitely, he did not thereby meet the requirement of AS 01.10.055(a), which requires presence in the state coupled with the intent to remain indefinitely. When he was here in 2006, Mr. K. at no time intended to remain indefinitely: he was here only temporarily in 2006, and he intended to return in 2007 and then remain indefinitely. Because Mr. K. does not dispute that his 2006 sojourn was only a temporary one, he could not establish residency during that visit, even if he intended to return at a later time and then to remain indefinitely.

Finally, regardless of his intent, Mr. K. did not show, by a preponderance of the evidence, that during 2006 he took "one step beyond" physical presence to establish his residency in the state. Prior to the end of 2006, Mr. K. had not obtained a job or rented an apartment in Alaska. He presented no evidence to show that he had taken any specific actions to establish residency.

IV. Conclusion

Mr. K. was not physically present in Alaska with the intent to remain permanently prior to January 1, 2007. He did not establish, by a preponderance of the evidence, that prior to January 1, 2007, he took "one step beyond" physical presence in the state to establish residency. He is therefore ineligible for the 2008 Alaska Permanent Fund dividend. The division's decision to deny his application is sustained.

DATED September 17, 2009

Signed

Andrew M. Hemenway
Administrative Law Judge

⁵ 15 AAC 23.143(c).

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, 2009.

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

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