

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

In the Matter of	)	
	)	
L. J. K.	)	OAH No. 09-0315-PFD
	)	Agency No. 2008-041-8125
<u>2008 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

L. J. K. timely filed an application for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied his application initially and at the informal appeal level. Mr. K. requested a formal hearing which was held on July 13, 2009. He participated telephonically and represented himself; PFD Specialist Kimberly Colby appeared telephonically and represented the division. The division's denial of Mr. K.'s application for a 2008 PFD is affirmed.

**II. Facts**

Mr. K. became very emotional and upset during the hearing and terminated his participation before the Administrative Law Judge or the division had an opportunity to question Mr. K. This decision is based upon the limited evidence presented and contained in the file.

Mr. K., a married man, is a retired State of Alaska employee. His wife became disenchanted with Alaska and obtained employment in Nevada. She left Alaska in May 2007 and has not applied for a 2008 PFD. Mr. K. left to join her at the end of October 2007. He did not leave earlier because Mr. K. stayed behind to ready their house for sale. When it did not sell the K.'s turned the house into a rental.<sup>1</sup> When he left Mr. K. intended to return the following spring (2008) to put a new roof on the house and again try to sell it. Mr. K. would have preferred not to leave Alaska, but he did.

On Mr. K.'s 2008 application and adult supplemental schedule he reported that he had moved out of Alaska; his principal home was in Reno, Nevada; he did not plan on returning to Alaska to remain indefinitely; and the K.s claimed their 2007 moving expenses as a deduction on

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<sup>1</sup> Exhibit 2.

their federal income tax return.<sup>2</sup> The division initially denied his application because he “marked ‘NO’ to the question[:] ‘are you returning to Alaska to remain indefinitely?’ on the Adult Supplemental Schedule.”<sup>3</sup> This, the division concluded, was evidence that Mr. K. had severed residency because it demonstrated that he no longer had the intent to remain in Alaska indefinitely and to make a home in Alaska.<sup>4</sup>

In response, Mr. K. submitted his informal appeal explaining that he completed his application when he was suffering from severe depression and does not feel that his answers clearly reflected his intentions.<sup>5</sup> It was his depression kept him from returning to Alaska in 2008 as planned but that he was “feeling a little better now and may be returning soon to my house in Wasilla.”<sup>6</sup> In support of his appeal Mr. K. offered that he was a resident of Alaska the entire year of 2007, he pays property taxes on his house in Alaska, he maintains an account Mat Valley Federal Credit Union, and he has “spent most of [his] adult life in AK and will be an Alaskan for the rest of my life.”<sup>7</sup> Mr. K. also inquired about the \$1,200 Alaska Resource Rebate. He believed he was eligible for the rebate because he had commuted to Anchorage from Wasilla and “paid for gasoline till [the] end of October.”<sup>8</sup> The division denied Mr. K.’s informal appeal.

In response Mr. K. requested a formal appeal where he emphasized his desire to return to Alaska in 2008 “to continue selling my house” but that he was unable to do so because of the depression.<sup>9</sup> “[He] absolutely intended to go back to AK in the spring to continue selling [his] house. Due to severe depression I could not do it!”<sup>10</sup>

The division maintains that Mr. K.’s actions during the qualifying year, 2007, and through the date of application render him ineligible to receive a 2008 PFD as a matter of law. Specifically, the division argues that Mr. K. engaged in two disqualifying acts: maintaining a principal home elsewhere and claiming moving expenses on his federal tax return. The division also asserts that Mr. K.’s actions, when viewed in total, demonstrate that he severed his Alaska

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<sup>2</sup> Exhibit 1 at 3, Exhibit 2 at 2 – 8.

<sup>3</sup> Exhibit 4 at 1.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5 at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Exhibit 9 at 2.

<sup>10</sup> *Id.*; *See also* Exhibit 8.

residency because he no longer had the intent to remain in the state indefinitely and make a home.<sup>11</sup>

### III. Discussion

To be qualified to receive a PFD the applicant must be an Alaska resident and meet a number of eligibility criteria, including residency.<sup>12</sup> The qualifying year for the 2008 dividend was 2007.<sup>13</sup> By regulation an otherwise eligible Alaska resident “is not eligible” for a PFD if, during the qualifying year or during the application year up to the date of application, the individual has engaged in any one of 17 acts.<sup>14</sup> An applicant’s ineligibility is automatic if the disqualifying action is taken at any time from January 1 of the qualifying year (in this case, 2007) through the date the application is complete.<sup>15</sup> This is an absolute disqualification that is independent from the broader question of whether the individual is, on balance, a legal resident of Alaska.

The regulation 15 AAC 23.143(d) provides in part that:

An individual is not eligible for a dividend if ... the individual has

(1) maintained the individual’s principal home in another state..., except while absent for a reason listed...in AS 43.23.008(a)(1)-(3) or (9)-(11)....

(10) moved from Alaska,

(A) for a reason other than one listed

(i) in AS 43.23.08(a)(1)- (3) or (9) – (11); or

(ii) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (i) of this subparagraph; and

(B) claiming moving expenses as a deduction on the individual’s federal income tax return unless the individual

(i) files an amended federal income tax return deleting he claimed moving expenses as a deduction; and

(ii) provides proof from the Internal Revenue Service that the individual filed an amended return;...

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11 AS 01.10.055.

12 AS 43.23.005(a).

13 AS 43.23.095(6).

14 15 AAC 23.143(d)

15 15 AAC 23.993(b)(2).

The exceptions identified above are absences for education, military, serving in congress or as congressional staff, and employment by the state that requires out of state service.<sup>16</sup> None of which are applicable to Mr. K.

To prevail on appeal Mr. K. must prove that the division's denial was incorrect.<sup>17</sup> He has not done so. Mr. K. does not challenge the assertion that his principal home is now in Nevada. He has consistently indicated that he intends to sell the house in Alaska. Mr. K. does not dispute that on his federal tax return he and his wife deducted the expenses associated with moving to Nevada. There is no evidence that Mr. K. has filed an amended return deleting the moving expense deduction.

Therefore, the evidence establishes that it is more likely than not that Mr. K. did engage in two disqualifying acts: he maintained his principal home in Nevada and he claimed moving expenses as a deduction on his federal income tax return. Either act is sufficient in isolation to render Mr. K. ineligible for the 2008 PFD. Mr. K. is not, therefore, eligible for a 2008 PFD as a matter of law. Because he is ineligible under either 15 AAC 23.143(d)(1) or (10) it is not necessary to address whether Mr. K. has severed his Alaska residency.

Mr. K. believes regardless of his eligibility for a 2008 PFD, he should receive the portion of the dividend designated as the "Alaska resource rebate." Unfortunately, he does not.

Through legislation passed in 2008, Alaskans eligible for the 2008 PFD were given \$1,200 in addition to the dividend amount calculated in the usual fashion.<sup>18</sup> In pertinent part, the legislation states "[t]o provide residents of the state with an Alaska resource rebate, *the amount of the 2008 permanent fund dividend shall be increased.*"<sup>19</sup> The plain language of the law shows that the \$1,200 resource rebate increased the amount of the PFD. Though the purpose of adding this fixed amount to the calculated dividend amount was special—i.e., to provide residents extra dividend dollars in times of high energy costs—the law does not separate the \$1,200 from the rest of the PFD.

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<sup>16</sup> AS 43.23.08(a)(1)- (3), (9) – (11)

<sup>17</sup> 15 AAC 05.030(n).

<sup>18</sup> See 2008 Sess. Law of Alaska, Fourth Special Session, ch. 2, § 5.

<sup>19</sup> *Id.* at ¶ 5(a) (emphasis added).

#### IV. Conclusion

L. J. K., by maintaining his principal home somewhere other than Alaska and by claiming moving expenses as a deduction on his 2007 federal income tax return, is ineligible to receive a 2008 PFD. Accordingly, the division's decision to deny Mr. K.'s 2008 PFD application is AFFIRMED.

The Alaska resource rebate increased the total amount of the 2008 PFD. Because Mr. K. is not eligible for the 2008 PFD, he is not eligible for that portion of the PFD designated as the "Alaska resource rebate."

DATED this 28<sup>th</sup> day of July, 2009.

By: Signed  
Rebecca L. Pauli  
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 31<sup>st</sup> day of August, 2009.

By: Signed  
Signature  
Virginia Blaisdell  
Name  
Director, Administrative Services Division  
Title

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