

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

IN THE MATTER OF )  
 )  
K. A. C. and minor )  
child R. A. C. )  
 )  
2008 Permanent Fund Dividend )

Case No. OAH 09-0367-PFD  
Agency No. 2008-062-2381

**DECISION**

**I. Introduction**

K. A. C. timely applied for 2008 permanent fund dividends for herself and on behalf of her child R. A. C. The Permanent Fund Dividend Division (“the division”) determined that Ms. C. was not eligible, and it denied the applications initially and at the informal appeal level. A formal hearing was held on September 21, 2009 and October 14, 2009. Ms. C. appeared by telephone. PFD Specialist Peter F. Scott represented the PFD Division by telephone.

At all times relevant to this appeal, Ms. C. and R. continued to be Alaska residents. They were not unallowably absent during the qualifying year and they did not maintain their principal home in another state. The applicants are eligible for 2008 dividends.

**II. Facts**

Ms. C. and her husband A. were born and raised in Alaska. Mr. C., who is not a party to this appeal, enlisted in the Marine Corps on September 8, 2005, and in 2006 went to Camp Pendleton in California for basic and then regular training in preparation for deployment to Iraq.<sup>1</sup> He and Ms. C. were married on October 10, 2006.<sup>2</sup> On April 17, 2007, Mr. C. deployed to Iraq and returned to Camp Pendleton in October or November. On May 13, 2009, Mr. C. submitted to the Marine Corps a request to move his family from Big City, Alaska, to Camp Pendleton, California, which they did in June 2009.<sup>3</sup> They now live in base housing at Camp Pendleton.

While her husband was in training in 2007, Ms. C. and R. traveled to California on three separate occasions to visit him. Ms. C. was in California from January 2<sup>nd</sup> – February 20<sup>th</sup>, a period of 49 days; March 26<sup>th</sup> – April 17<sup>th</sup>, a period of 22 days; October 10<sup>th</sup> – December 14<sup>th</sup>, a

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<sup>1</sup> Exh. 16 at pg. 7. This document was received from Ms. C. on October 16, 2009, and was marked for identification as Exhibit 16, pages 1-10.  
<sup>2</sup> Ms. C. testimony, September 21, 2009.  
<sup>3</sup> Exh. 16 at pg. 2.

period of 65 days and December 29<sup>th</sup> – December 31<sup>st</sup>, a period of 2 days; for a grand total of 138 days absent.

At least initially, Mr. C. lived on base, so Ms. C. and R. stayed with him in base housing in 2007. She took only suitcases with the clothing she and R. would need for their visits with Mr. C.; most of their belongings remained in Alaska at her mother's house. When Ms. C.'s husband deployed to Iraq in April 2007, her father and brother flew to California to help move his possessions into storage. She returned to Alaska and stayed at her mother's house.

In preparation for her husband's return from Iraq in October 2007, Ms. C. flew to California and rented an apartment off base. She executed the lease on October 17, 2007, and signed for her husband as his power of attorney.<sup>4</sup> All three members of the family were listed on the lease as persons occupying the apartment.<sup>5</sup> When Mr. C. returned from his deployment to Iraq, the family lived in the apartment. Ms. C. went to Alaska for the 2007 holidays and when base housing became available to Mr. C. in January 2008, she and R. went to stay with him there.

Ms. C. traveled back and forth between California and Alaska in 2008, just as she had done in 2007. Although her 2008 absences are not at issue for this appeal, they are included here so as to illustrate her continuing pattern of traveling back and forth from Alaska to California to be with her husband. In August 2008, Ms. C. purchased a home outside Wasilla, Alaska, and moved their possessions – nearly 6,000 pounds – from her mother's house to their new home. When Mr. C. moved the family to California in 2009, they rented the house to Ms. C.'s brother until they return.

### **III. Discussion**

The division asserts that Ms. C. is ineligible for a 2008 PFD due to the failure of her husband A. to apply for the dividend.<sup>6</sup> The division claims that had A. applied, he would be eligible and as a result, Ms. C. would be absent accompanying an eligible military spouse and would herself be eligible for the dividend. But Mr. C. did not apply for the dividend so the division maintains that by going to California to be with him at Camp Pendleton, Ms. C. moved and maintained her principal home in another state during the qualifying year or at the date of application, actions that would render her ineligible. The division's position is incorrect.

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<sup>4</sup> Exh. 15 at pgs 4, 5, 7 & 9-12. This document was received from Ms. C. on October 16, 2009, and was marked for identification as Exhibit 15, pages 1-12.

<sup>5</sup> Exh. 15 at pg. 2.

**A. Ms. C. remains an Alaska resident**

There is no dispute that Ms. C. was an Alaska resident before she departed the state in January 2007. 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.<sup>7</sup>

The evidence is clear that Ms. C. went to California with the intent to stay with her husband for temporary periods of time while he was at Camp Pendleton. The division claims that she moved from Alaska and thus severed her ties to the state and her residency. Quite the contrary, Ms. C. does not appear to have severed her ties to Alaska. She is still registered to vote in the state, she maintains an Alaska driver’s license,<sup>8</sup> the bulk of the family’s possessions were kept at her mother’s house, both Ms. C. and her husband have family in the state, and they purchased a home in Wasilla in August 2008 that her brother is now renting until they return.<sup>9</sup> In contrast, other than her temporary presence there, Ms. C. does not appear to have established any significant ties to California.

The division asserts that Ms. C.’s actions are inconsistent with the intent to remain an Alaska resident. The relevant factual inquiry in this appeal is whether Ms. C. plans to come back to Alaska to make her home, or whether she intends to stay indefinitely in California or somewhere else. There is insufficient evidence in the record to establish that Ms. C. intends to make California her home. Rather, a preponderance of the evidence shows that Ms. C.’s stay there is temporary and that she plans to come back to Alaska to remain indefinitely.

**B. Ms. C. did not maintain her principal home in another state**

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.<sup>10</sup> In its position statement, the division writes:

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<sup>6</sup> Division’s Formal Hearing Position Statement at pg. 2.

<sup>7</sup> AS 01.10.055(c).

<sup>8</sup> Exh. 5 at pg. 2.

<sup>9</sup> Significantly, Ms. C. stated that the family’s move to California in June 2009 was proof of a home-of- record move. Exh. 16 at pg. 1. However, this is not the form to change a military member’s state of legal residence, which for Mr. C. still appears to be Alaska. *See id.* at box no. 6.

<sup>10</sup> 15 AAC 23.143(d)(1).

At the heart of Ms. C.'s appeal is the question of intent in terms of where she truly intended to reside. The Division maintains that, it is more likely than not, her intention was to establish a household with her husband in Camp Pendleton, California. A newly married couple will in most circumstances choose to reside together and the preponderance of evidence points to the fact Ms. C. moved and was maintaining her principal home in California with her husband during the 2007 qualifying year and as of the date of application of her 2008 Permanent Fund Dividend.<sup>[11]</sup>

The division's bald assertion about newly married couples assumes facts not in evidence, so it is rejected for purposes of this appeal. The division suggested that Ms. C.'s trips to California "are not indicative of maintenance of a principal home in Alaska by Ms. C. during the qualifying year and they cannot be viewed as evidence she did not move to California during the qualifying year."<sup>12</sup> 15 AAC 23.143(d)(1) generally disqualifies applicants who maintain a principal home outside of Alaska, but it does not specify how that transition takes place. 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.<sup>13</sup> 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 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.

While she was in California, Ms. C. stayed in a motel, with a friend's wife, in an apartment after her husband returned from Iraq, and in base housing at Camp Pendleton. All of these residences were temporary in nature and consistent with Ms. C.'s intent to return to Alaska to remain indefinitely. Ms. C. did not maintain a principal home in California during her absence from Alaska.

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<sup>11</sup> Division's Formal Hearing Position Statement at pg. 4.

<sup>12</sup> *Id.*

The division claims that Ms. C.'s statements throughout her application process and this appeal have been inconsistent and "appear[] to be an effort to qualify for the dividend by revising her residency history."<sup>14</sup> Ms. C.'s explanation is more persuasive: the application questions were confusing for her as a military spouse and extremely difficult to answer correctly. Ms. C. may have answered "yes" to the question whether she maintained her principal home outside of Alaska during the qualifying year,<sup>15</sup> but the evidence establishes that she did not.

**C. R. is an eligible Alaskan**

The division asserts that "R. C. is also ineligible for the 2008 Permanent Fund Dividend as he does not have an eligible sponsor."<sup>16</sup> Children cannot be paid dividends directly; their dividends must be paid to an adult.<sup>17</sup> 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.<sup>18</sup>

Before determining who should serve as a child's sponsor, the first inquiry should be whether the child is eligible. R.'s situation appears to be identical to Ms. C.'s. Since Mr. and Ms. C. intended to return the child to Alaska to remain indefinitely, he has maintained his Alaska residency. His absences were less than 180 days in the qualifying year, and he did not maintain a principal home anywhere outside of Alaska.

Because R. is eligible, there is a need to identify a suitable sponsor for him. The need does not present an issue in this case, however, because Ms. C. is eligible and is therefore an appropriate sponsor.

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<sup>13</sup> *In the Matter of Jones*, Caseload no. 990017 (Dept. of Revenue, January 2000).

<sup>14</sup> Division's Formal Hearing Position Statement at pg. 3.

<sup>15</sup> Exh. 1 at pg. 4.

<sup>16</sup> Division's Formal Hearing Position Statement at pg. 5.

<sup>17</sup> AS 43.23.005(c).

<sup>18</sup> 15 AAC 23.113(g).

**IV. Conclusion**

Based on a preponderance of the evidence, Ms. C. is eligible for a 2008 dividend. R. is also eligible for a 2008 dividend, and Ms. C. is a suitable sponsor for him. The applications of K. A. C. and R. A. C. for 2008 dividends shall be granted.

DATED this 6th day of November, 2009.

By: Signed  
Kay L. Howard  
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 4th day of December, 2009.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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