

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

IN THE MATTER OF)
)
 J. H. and S.)
 & N. J.)
) Case No. OAH 09-0399-PFD
2008 Permanent Fund Dividend)

DECISION

I. Introduction

J. H. timely applied for a 2008 permanent fund dividend. Ms. H.’s adult daughter, S. J., also applied for dividends for herself and on behalf of her minor child, N. J. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level.

At Ms. H.’s request, a formal hearing was held on September 21, 2009. Ms. H. appeared by telephone. Ms. H. represents Ms. J. by duly executed power of attorney, and she has been appointed as guardian of N. PFD Specialist Bethany Chase represented the PFD Division.

The absences of all three applicants during the qualifying year were consistent with continuing Alaska residency, and the absences were allowable under AS 43.23.008. The applicants are eligible for 2008 permanent fund dividends.

II. Facts

Ms. H. is in her fifties, and she has lived in Alaska since she was three years old. Ms. H.’s daughter is Ms. J.; Ms. J.’ son is N. Ms. J. and N. have apparently lived in Alaska for their entire lives.

On the night of September 11, 2007, Ms. J. was struck by a car as she was crossing Tudor Street. According to a story in the Anchorage Daily News about the accident, Ms. J. suffered extremely severe injuries that left her in critical condition on life support. By September 25, 2007, Ms. J. had exhausted the ability of Anchorage physicians to treat her, and she was medevaced to the University of Washington Medical Center for treatment that could not be provided in Alaska. Ms. H. rode in the medevac plane to Seattle with Ms. J. on September 25, 2007. Over the course of the next few weeks, Ms. H. returned to Alaska twice, once to collect N. and another time to partially pack up Ms. J.’ place and her own place. None of the applicants have been back to Alaska since November of 2007.

Ms. H. had been renting a house in Alaska before she left. At the time, she had been hoping to purchase the house from her landlord. After she left Alaska, the landlord had health problems of some kind and was forced to sell the house as-is. Ms. H. does not know what happened to many of her personal belongings, except that they apparently went to the new owner of the house.

When she first arrived in Washington, the state had paid for Ms. H. to stay in a hotel. When those benefits ended, Ms. H. rented an apartment in Washington. On October 14, 2008, all of the applicants went to San Diego where Ms. J. is now being treated at a specialty center for spinal cord injuries. Part of the reason the San Diego facility was recommended was that because Ms. J. is still dependent on a ventilator to breathe, the drier air of San Diego was preferable to the damp air of Seattle. Thus, climatic change was at least a partial element in the need to move to San Diego, but the change was not a change from Alaska, where the air can be quite dry, particularly in the winter, but rather a change from the climate of Seattle. The principal reason for the change, however, was not for climate reasons, but because of the availability of a specialized treatment center for spinal cord injuries in San Diego.

When the applicants moved to San Diego, Ms. H. rented a house on a year-long lease. She chose a house that was accessible for the handicapped, and suitable for the equipment that Ms. J. will need when she is able to transition to a standard residential living arrangement. At this point, Ms. J. is out of the hospital and living in a skilled nursing home until her condition further improves.

At the time of the accident, Ms. J. did not have health insurance, and she did not receive any insurance from the accident. Ms. J.' expenses were paid by Medicaid, facilitated by an Alaska case worker. When she went to Seattle, Alaska's Medicaid office initially covered expenses, but after a certain period of time the Alaska caseworker transferred the case to Washington State. This was necessary not only because Ms. J. was expected to require treatment in Washington for an extended period of time, but also because some of the doctors in Washington were not willing to make the effort to enroll as providers in Alaska's Medicaid program.

Ms. H. testified that Ms. J.' recovery has been a long and slow process, fraught with a series of unexpected and dangerous complications. At this point, however, Ms. J. is on the mend, and her condition is gradually improving. Her doctors have not provided an estimate at this point of when Ms. J. will be able to return to a more normal living situation, or when it will be safe for her to travel back to Alaska. Ms. H. has tried to work part-time when she is able, but in spite of the fact that Ms. J. has 24-hour care she still finds that aiding in Ms. J.' care requires most of her time.

Ms. H. was required to change her driver's license to either Washington or California by local law, but other than arranging for temporary living arrangements she has not established any significant ties to either location. Ms. H.'s principal ties to Alaska are social, particularly her church home in Anchorage. A very significant tie to Alaska is the fact that Ms. H. has several credited years of service in the Alaska Public Employee's Retirement System as a tier II member. Ms. H. could have withdrawn her PERS money, but she kept it in the system because she plans to return to state service long enough to vest before she reaches retirement age. Ms. H. provided credible testimony that she, Ms. J. and N. all intend to return to Alaska as soon as Ms. J. has recovered enough to safely do so. Although Ms. J. still has a ways to go in her recovery, at this point it does appear more likely than not that Ms. J. will recover to the point that she is realistically able to return to Alaska.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident all through the qualifying year and at the date of application.¹ A person who leaves Alaska remains an Alaska resident so long as the person maintains the intent to return to Alaska to remain indefinitely and make a home, unless the person claims residency in another state or performs other acts or is absent under circumstances that are inconsistent with the intent to remain a resident of Alaska.² A person who maintains a principal home in another state is not eligible for a dividend, except in certain circumstances that do not apply to this case.³ A person who receives benefits under a claim of residency in another state is not eligible for a dividend, except for Medicaid benefits consistent with intent to retain residency in Alaska.⁴

The evidence clearly establishes that the applicants have remained Alaska residents. There is nothing to suggest that they left Alaska for any other reason than Ms. J.' need to receive life-saving medical treatment. Ms. H. offered credible testimony that the applicants intend to return to Alaska, thus shifting the burden of proof back to the division to support its position that the applicants are no longer Alaska residents. The division has not offered any substantial evidence indicating that the applicants intend to stay in Seattle, San Diego, or anywhere else any longer than is necessary for Ms. J. to recover to the point that she may safely return to Alaska. Facts lending particular credibility to Ms. H.'s testimony include the length of time she has been an Alaska

¹ AS 43.23.005(a)(2)-(3).

² AS 01.10.055(c).

³ 15 AAC 23.143(d)(1).

⁴ 15 AAC 23.143(d)(17).

resident, and in particular the maintenance of her investment in the PERS system and the likelihood she will return to complete the service time necessary to vest in the retirement system. Coupled with the obvious fact that Ms. J. has little or no choice about where she is able to obtain treatment, and that Ms. H. and N. have an obvious reason to be out of the state until Ms. J. recovers, the evidence the applicants have put forward presents a particularly convincing case that the applicants have remained Alaska residents.

The division asserts that the applicants maintained their principal home in Washington during the qualifying year. The evidence does not support this assertion. Ms. J. has resided continually in a hospital up to the date of application, hardly a residential situation that one could regard as a principal home. As of the hearing date, she was still living in a skilled nursing facility, waiting until she is well enough to live in a normal home. Ms. H. and N. have lived in rented places chosen for their proximity to Ms. J. These residences are no more than temporary quarters where Ms. H. and N. can stay while caring for Ms. J. Regardless of the fact that the applicants did not maintain a specific house or apartment in Alaska, it is clear that Anchorage is their home, and they are merely maintaining temporary housing during their absence. As Ms. H. argued at the hearing, one must live somewhere.

Finally, the division asserts that Ms. J. received benefits under a claim of residency in another state. The regulation on which the division relies clearly excepts Medicaid benefits. The division has not shown that anything about the way Ms. J. received Medicaid benefits that would indicate she did not plan to return to Alaska.

The division appears to present an argument that certain individual actions considered out of context may be regarded as inconsistent with Alaska residency, and that these actions may then be used to show that a person has severed their Alaskan residency even when the body of evidence as a whole shows that the person has maintained the intent to return to Alaska to remain indefinitely and make a home. It is true that AS 43.23.143(d) does provide for some actions, such as voting in another state, that will make a person ineligible for a dividend the following year even if the person is still an Alaska resident. But no action is necessarily inconsistent with Alaska residency unless it shows that the person does not intend to return to Alaska. Purchasing a house in another state with the intent to live in it full-time for an indefinite period would be inconsistent with Alaska residency. Accepting a permanent full-time job in another state, with the intent to work at the job indefinitely, would generally be inconsistent with Alaska residency. Renting an apartment for a limited period while caring for a critically injured daughter who has been medevaced to another state is not

inconsistent with Alaska residency. Accepting Medicaid in another state under a claim of residency when doing so is the only way to preserve one's life is not inconsistent with the intent to return to Alaska. Such an act evidences nothing more than the intent to live. While focusing on minute details that could, when considered alone and out of context, be considered inconsistent with Alaska residency, the division has missed the obvious overall situation.

IV. Conclusion

Everything that the applicants have done in this case has been consistent with a temporary absence to receive emergency medical care, to care for a daughter receiving emergency medical care, or to accompany a mother receiving emergency medical care. The applicants have not maintained their principal home in another state or received benefits, other than Medicaid, under a claim of residency in another state.

J. H., S. J., and N. J. are eligible for 2008 permanent fund dividends.

DATED this 28th 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.]