

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

In the Matter of	)	
	)	
J. C. D.	)	OAH No. 09-0414-PFD
	)	Agency No. 2008-063-3817
<u>2008 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

The division's denial of Mr. D.'s application is affirmed because undisputed evidence shows that during the relevant period he maintained a claim of residency in Washington in his employment records. This is a disqualifying act making Mr. D. ineligible for a 2008 PFD. Although the result is harsh, the Department of Revenue has no discretion but to deny him a 2008 dividend.

**II. Facts**

Mr. D. purchased a home in the Matanuska Valley in 2006. He moved to Alaska in November 2006 and is now a P. O. with the State of Alaska. Prior to moving, he was a resident of Washington and in the military. He listed Washington as his state of legal residence (SLR) on his leave and earnings statement (LES).

When he moved to Alaska, he researched what steps he would need to take by December 31, 2006 to qualify for a 2008 PFD. Mr. D. went to the division's website to confirm what actions he would need to take. He obtained an Alaska Drivers' License, registered his vehicle in Alaska, and registered to vote. He did not, however, file with the military a DD Form 2058 to change his SLR from Washington to Alaska on his LES. Mr. D. testified that if he knew he needed to change his SLR he would have filed the DD Form 2058. Mr. D. is eligible for and will be receiving a 2009 PFD.<sup>1</sup>

The PFD website has a page for members of the military. The page mentions the need to have Alaska as the SLR on an individuals LES and cautions the applicant to keep a copy of the DD Form 2058. It is unknown if in 2006 the division's website provided similar information.<sup>2</sup>

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<sup>1</sup> Representation of PFD Specialist Bethany Chase.

<sup>2</sup> <http://www.pfd.state.ak.us/military/index.aspx> (November 22, 2009).

### III. Discussion

A relatively common source of appeals in PFD cases are disqualifying actions taken under 15 AAC 23.143(d) which render an otherwise eligible applicant ineligible for a PFD. Mr. D. is such an applicant.

Mr. D. was a credible witness and on the facts presented, it is more likely than not that Mr. D. was physically present in Alaska with the intent to remain indefinitely and to make a home in the state as of December 31, 2006.<sup>3</sup> Mr. D.'s testimony established that he maintained his principal home in Alaska and committed himself to a life in Alaska indefinitely prior to December 31, 2006. Therefore, he was a resident during 2007, the qualifying year for the 2008 PFD.<sup>4</sup> A person may remain a resident for purposes of the PFD and at the same time be ineligible for the dividend. PFD regulations provide that in certain circumstances an act or omission render an otherwise eligible applicant ineligible. When this occurs, the PFD regulations are explicit and prevent the payment of a dividend. The applicable regulation is 15 AAC 23.143(d), which reads in relevant part:

An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

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(2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely;

The law disqualifying an applicant who has maintained a claim of residency in another state in the individual's employment personnel records is an absolute rule. It states that a person is not eligible for a dividend if he has claimed or maintained a claim of residency in another state between the beginning of the qualifying year and the date of application, unless he can show an error or delay in processing his request to change his state of legal residency. Mr. D. admits that

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<sup>3</sup> AS 43.23.095(7); AS 01.10.055.

he did not file a Form DD 2058. By not requesting a change prior to the qualifying year, he has “claimed or maintained a claim of residency.”

As part of his 2008 PFD application Mr. D. was required to certify that he had “not claimed residency in another state.”<sup>5</sup> While he did not change his SLR on his LES, he took no affirmative step to claim residency in Washington from the time he moved to Alaska until he completed his PFD application. Therefore, his certification was accurate and not contradictory to the facts. Having heard Mr. D.’s testimony the division agrees that Mr. D. did not misrepresent his residency.

The law does not permit the division to weigh Mr. D.’s failure to change his residency on his LES against other facts to determine that a person, on balance, is an Alaska resident and should therefore qualify for a dividend. Instead, the regulation excludes from PFD eligibility applicants, who like Mr. D., are residents of Alaska for purposes of the PFD program but engage, through action or omission, in a disqualifying act.

The Alaska Supreme Court has upheld the authority of the Department of Revenue to create such regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility.<sup>6</sup> The regulation at issue in this case simply requires the division to ask whether the applicant claimed or maintained a claim of residency in another state on country in his employment personnel records. It is undisputed that Mr. D. took no steps to change his SLR from Washington to Alaska. Therefore, he maintained a claim of residency in another state and the division must deny the application without further inquiry into the applicant’s status as a resident. Once adopted, this bright-line rule affords the Department no choice.

The result of the absolute rule in this case is harsh but the regulation is clear; Mr. D. is not eligible for a 2008 PFD because he failed to change his state of legal residence prior to the start of the qualifying year thereby maintaining a claim of residency in another state.

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<sup>4</sup> AS 43.23.095(6) (“‘qualifying year’ means the year immediately preceding January 1 of the current dividend year”).

<sup>5</sup> Exhibit 3 at 1.

<sup>6</sup> *Church v. State of Alaska; Department of Revenue*, 973 P2d 1125, 1128-9 (Alaska 1999).

#### **IV. Conclusion**

The division correctly denied the application of J. C. D. for a 2008 permanent fund dividend. Nothing in this decision precludes Mr. D. from eligibility for future PFDs.

DATED this 23rd day of November, 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 21<sup>st</sup> day of December, 2009.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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