

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

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| In the Matter of |) | |
| |) | |
| C. M. K. |) | |
| and minor child M. |) | OAH No. 09-0418-PFD |
| |) | Agency No. 2008-056-9032 |
| <u>2008 Permanent Fund Dividend</u> |) | |

DECISION

I. Introduction

C. M. K. timely applied for 2008 permanent fund dividends (PFD) on behalf of herself and her daughter, M. The Permanent Fund Dividend Division (“division”) determined that they were ineligible and denied their applications initially and at the informal appeal level. Ms. K. requested a formal hearing by correspondence. By notice dated August 19, 2009, Ms. K. was given until September 20, 2009 to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both parties then had until September 30, 2009, to respond to any documents received from the other. The division filed a position statement and hearing exhibits. Ms. K. did not add to the record on appeal.

The division’s denials are affirmed because Ms. K. moved out of state before submitting the PFD applications and as a result she and M. were not considered Alaska residents on the date of application for the 2008 dividend.

II. Facts

Ms. K. has been an Alaskan since at least 2005.¹ In 2007, Ms. K. was employed at ASCG, Incorporated in Anchorage.² She married S. O. in June 2007, after which he moved to Arizona for his work and purchased a home there in December 2007.³ Ms. K. and her daughter M. remained in Alaska after the marriage. On December 30, 2007, Ms. K. and M. left Alaska. Their first stop was California, where they vacationed in Disneyland for a few days. On January 4, 2008, Ms. K. and M. moved into Mr. O.’s house in Arizona.⁴

¹ Exh. 9 at pg. 3.

² Exh. 1 at pg. 6.

³ S. was not an Alaska resident when he and Ms. K. were married; his residency and eligibility status are not at issue in this appeal.

⁴ Exh. 1 at pg. 3.

Ms. K. filed hers and M.'s 2008 PFD applications online on January 29, 2008.⁵ She indicated they were not in Alaska at the time,⁶ and that their absence began on December 30, 2007. She explained their absence as follows: "Left for Disney Land in CA Dec 30, 2007, then moved to AZ Jan 4, 2008."⁷

Because they were not in Alaska on the date of application, Ms. K. was required to complete an adult supplemental schedule which asked for additional information from the applicant. In response to the question whether she would be returning to Alaska to remain indefinitely, Ms. K. answered "no" on her application.⁸ Ms. K. also wrote "no" on the online signature page next to the statement "I am now and intend to remain an Alaska resident indefinitely."⁹ Next to the statement "I have not claimed residency in another state[.]" Ms. K. wrote "I have recently-2008. Not for 2007." Finally, in response to the question inquiring about household goods, Ms. K. wrote that she "moved AK household items Dec[.] 30, 2007 to AZ."¹⁰

Ms. K. and M. returned to Alaska on September 27, 2008,¹¹ and appear to have remained in the state since then.

III. Discussion

The qualifying year for the 2008 PFD is 2007.¹² Ms. K.'s correspondence with the division and throughout this appeal indicates she is of the belief that a person's eligibility for a PFD ends on December 31st of the qualifying year.¹³ However, that is not the case. To be eligible for a permanent fund dividend, a person must be a state resident during the entire qualifying year *and on the date of application*.¹⁴ According to PFD regulation 15 AAC 23.993(b), the date of application has a specific definition:

For purposes of AS 43.23.005(a) and this chapter, "date of application" means the date on which an application for a dividend that was timely filed is complete; in this subsection, an application is

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⁵ Exh. 1 at pgs. 1 & 10.

⁶ Exh. 1 at pg. 1.

⁷ Exh. 1 at pg. 2.

⁸ Exh. 1 at pg. 3.

⁹ Exh. 1 at pg. 4.

¹⁰ Exh. 1 at pg. 3.

¹¹ Exh. 4.

¹² AS 43.23.095(6).

¹³ See, for example, Exh. 2 at pg. 1 & Exh. 9 at pg. 3.

¹⁴ AS 43.23.005(a)(2)-(3) (emphasis added).

“complete” if it provides all information that is required by AS 43.23 and this chapter, including supplemental or additional information required by or requested under 15 AAC 23.173, that supports the applicant’s claim of residence, physical presence in the state, and eligibility for the dividend.

This regulation establishes that the “date of application” is not the day the person submits an application, but rather it is the last day on which a person submits necessary supporting information.¹⁵ Ms. K. filed online applications for herself and M., along with supplemental schedules, on January 29, 2008, then submitted her signature page, tax return and a letter on April 21, 2008.¹⁶ Thus, under the above regulation, this was the date of her application.

A person who leaves Alaska is no longer an Alaska resident if the person is absent under circumstances that are inconsistent with the intent to return to Alaska to remain indefinitely and make a home.¹⁷ Ms. K. stated she and M. moved from Alaska to Arizona on January 4, 2008, and that she did not intend to return to remain indefinitely. Their move was completed before she submitted their applications or supplemental schedules. As a result, Ms. K. and M. were not Alaska residents on the date of their applications and they are therefore not eligible for a 2008 PFD.¹⁸

IV. Conclusion

Ms. K. and her minor child M. moved from Alaska to Arizona before Ms. K. applied for their 2008 PFDs, so they were not Alaska residents on the date of their applications. Therefore they are not eligible for a 2008 PFD and the decisions of the division to deny their applications are AFFIRMED.

DATED this 31st day of December, 2009.

By: *Signed* _____
Kay L. Howard
Administrative Law Judge

¹⁵ 15 AAC 23.993(b) was amended in 2009, but the above language was in effect for the 2008 PFD and applies to Ms. K.’s appeal.

¹⁶ Exh. 1.

¹⁷ AS 43.23.095(7); AS 01.10.055(c).

¹⁸ It is also possible that Ms. K.’s application would have been denied even if she had not moved until after filing her 2008 PFD application. Ms. K. had her household belongings moved to Arizona on December 30, 2007, so it appears she formed the intent to sever her Alaska residency in 2007. *See* Exh. 1 at pg. 3. This is merely conjecture, however, as Ms. K. clearly moved to Arizona before she filed her 2008 PFD application and this decision has been issued on those facts.

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 10th day of February, 2010.

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

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