

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

IN THE MATTER OF)
)
 M. C. and her children)
 P., K., S. & H.C. and A. S.)
) Case No. OAH 09-0425-PFD
2008 Permanent Fund Dividend)

DECISION

I. Introduction

M. C. timely applied for 2008 permanent fund dividends for herself and on behalf of her children. 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. Ms. C. requested a formal hearing. A hearing was held on September 24, 2009. Ms. C. appeared by telephone. PFD Specialist Peter Scott represented the division.

Although the applicants have been absent from Alaska for an extended time, they have remained Alaska residents and are eligible for 2008 permanent fund dividends.

II. Facts

Ms. C. has lived in Alaska for about twenty years. In 2007, the family was living in a rented duplex in No Name City, near Ms. C.’s sister’s residence. On November 29, 2007, Ms. C., her husband, her mother, her oldest son, the five children whose applications are subjects of this case, and their dog left Alaska for Washington State in Ms. C.’s van. Ms. C. has described this trip as a vacation that her family takes every seven years. The reason for the trip was to visit relatives, including some relatives who were in ailing health.

When they left Alaska, Ms. C.’s family terminated their tenancy in the duplex they had been inhabiting. The family stored its personal belongings at the home of Ms. C.’s sister in No Name City. Ms. C. also left her pickup truck with her sister. Ms. C. testified that she and her family had planned to stay in Washington until about June of 2008, an absence of around seven months. Ms. C. explained that she has many relatives in Washington state, and she felt that it was important for her children to have some time to get to know the members of their extended family, particularly their grandparents and great grandparents.

Unfortunately, the trip took on a more somber tone as a number of the family’s elderly relatives suffered declining health. Ms. C.’s husband’s grandfather had been ailing and in need of

placement in a home before the family left for Washington, but after they arrived, Ms. C.'s husband's grandmother was diagnosed with stomach cancer and both grandparents then passed away within two weeks of each other. Ms. C.'s husband's aunt passed away, and a short time after that his other grandfather passed away. Within another two weeks, Ms. C. lost her own grandmother.

At some point, the front end went out of the old van that the family had traveled down in, and Ms. C. sold it. Ms. C. and her husband bought a 1970 Chevrolet Nova that Ms. C.'s husband plans to restore, and Ms. C. bought a 1991 Acura for transportation. Under these circumstances, and running short of money when June of 2008 came around, the family decided to delay their return to Alaska until fall when they received their dividends. Ms. C.'s plan was to fly the children back to Anchorage, and take the ferry to Haines with her husband and then drive the rest of the way.

When they arrived in Washington the family initially stayed with various relatives, setting up tents in their relatives' yards during the warmer months. The family moved around among relatives' homes, and at the time of the hearing the entire family had been staying in a Spokane motel room for eight months on a week-to-week basis. Ms. C.'s husband and her oldest son have been working when they can at a day labor program where they arrive each morning to see if there is work available. The children have apparently been attending school in the Spokane area, though Ms. C. has indicated that their grades have been dropping, in her opinion due to uncertainty about their situation.¹

Ms. C.'s sister has a large home in the Mat-Su area. Upon their return, Ms. C.'s family is welcome to stay with the sister until they find another place of their own to rent. Ms. C. has maintained her Alaska driver's license and her voter registration in 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.² A resident who leaves Alaska remains a state resident, so long as the person intends to return to Alaska to remain indefinitely and to make a home.³

The division argues that Ms. C. did not intend to return to Alaska at her date of application. The division acknowledges that Ms. C. and her family want to return to Alaska, and that they have "lived a transient lifestyle since they left Alaska." Because the C.s do not have the money to return

¹ Exhibit 4, page 5.

² AS 43.23.005(a)(2)-(3).

without their 2008 dividends, according to the division, they are unable to return, and therefore cannot maintain the intent to return, despite their desire.

The division has also suggested that the C.s might not return to Alaska even if they do receive 2008 dividends, instead using the money to continue living in Washington. The C.s have ties to Alaska and a history of over twenty years in the state. They appear to have prospects of economic stability back in the Mat-Su Valley, as compared to no significant employment or earning potential in Eastern Washington. The C.s have a place to stay upon their arrival back in Alaska. Ms. C.'s testimony that she needs enough money to buy five plane tickets to Anchorage plus ferry fare for herself, her husband and their two cars before she can possibly return to Alaska is somewhat suspect; one might ask why she doesn't simply trade the Acura and the Nova for a used van, passport fees, and enough gas to immediately drive the entire family back home, instead of continuing to live in a motel room for nearly a year. Nevertheless, it is slightly more likely than not that the C.s would have returned to Alaska if they had received their 2008 dividends, and that they will return if they are found to be eligible. The issue in this case is limited to whether Ms. C. and the children remained Alaska residents, when they left the state and maintained the subjective intent to return, but have so far been unable to for lack of money.

From the division's perspective, there is no doubt a familiar ring to an applicant who has been living out of state for some time asserting that she will return to Alaska just as soon as she gets one more dividend. In many such cases, other evidence may make it possible to conclude that the applicant has severed residency regardless of whether she gets a dividend or not. This case is somewhat different in that Ms. C. expects that she and her children would receive dividends and be able to use that money to return to the state. There is also a possibility that, had Ms. C. been at all concerned about receiving dividends, she might have taken other steps to ensure she could return to Alaska. For example, she might have repaired her van instead of buying the Acura, and she then would have been able to return to the state with all the children and not had to buy five plane tickets.⁴

While eligibility is always contingent on state residency, with the facts of this case the division has created a circular legal construct in which residency in turn depends on eligibility. If the division decides that Ms. C. is ineligible, she will not get a dividend, and will therefore be

³ AS 43.23.095(7); AS 01.10.055(c).

⁴ The C.s drove to Washington before passports were necessary for travel through Canada. For children, passport fees are \$85 per person, and \$100 for adults. Thus, obtaining passports for the entire family would be a considerable expense that was not required for the trip down.

unable to return and at some point will no longer be an Alaska resident. On the other hand, if the division decides she is eligible, she will be able to fulfill her subjective intent to return, and she will therefore be eligible. In either case, the division's decision would be correct. To the extent it makes sense, this circularity can be interpreted in Ms. C.'s favor. Ms. C. believes that she and the children are eligible, and that at the conclusion of this case they will eventually be paid the dividends. If her residency hinges on the self-fulfilling element of this subjective belief, she should be considered eligible.

Strained and esoteric reasoning is not the best way to determine dividend eligibility, and it is unwise to interpret the law in such a way that a person's intent is determined by the actions of the division rather than the actions of the individual. Fortunately, it is not necessary to go to such lengths in this case. While the division is correct that someone who cannot return to Alaska in the foreseeable future should generally not be considered an Alaska resident, Ms. C.'s situation is not the same as that presented by a person who is permanently unable to return to the state, as in the case of a person with a medical condition that requires permanent presence out of the state.

While unexpected events have delayed the applicants' return to Alaska, they are not in a situation where return to the state is completely beyond their reach. Considering the unsuitability of their situation in Washington compared to their ability to find housing and employment in Alaska, there is a probability that at some point Ms. C. and her husband will find some way to scrape together enough money to get back to Alaska. The fact that at this point they have pinned their return to receipt of their dividends does not mean that they lack the requisite intent to return to Alaska to remain indefinitely and make their home. It merely means that the applicants have calculated that at this point using their 2008 dividends to buy plane tickets would be the fastest and most expeditious means to get back home. Even if incorrect, such a calculation is not enough to necessarily support a conclusion that the applicants no longer have the genuine intent to return to Alaska to remain indefinitely to make their homes.

While their lengthy absence and the uncertainty about exactly how and when they will be returning to Alaska raises obvious concerns about their residency, under the circumstances of this case it should not be said that the applicants have severed their Alaska residency. The applicants have strong ties to Alaska, few ties to Washington state, and better prospects for regaining their financial footing in Alaska. The unforeseen circumstances of multiple deaths in the applicants'

family while absent and the resulting delay and financial insecurity presented an unusual situation that altered the applicants' original plan to return to the state, but it remains more likely than not that the applicants will return to Alaska to remain indefinitely, and that they have maintained the requisite to remain Alaska residents during their absence.

IV. Conclusion

Because the applicants have retained the requisite intent to return to Alaska to remain indefinitely and to make their home, they continue to be Alaska residents and are therefore eligible for 2008 dividends.

DATED this 16th day of November, 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 17th day of December, 2009.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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