

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

In the Matter of :)	
)	
M. G. B.)	OAH No. 09-0474-PFD
)	Agency No. 2009-037-4941
<u>2009 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

M. G. B. appeals the denial of his application for a 2009 Permanent Fund dividend (PFD). The Permanent Fund Dividend Division (“division”) denied the application because he did not have the requisite intent to remain an Alaska resident indefinitely at the time of his application. Mr. B. requested a formal hearing by correspondence. By notice dated September 11, 2009, Mr. B. was given until October 11, 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 October 21, 2009, to respond to any documents received from the other. The division filed a position statement and hearing exhibits. Mr. B. did not add to the record on appeal.

The division incorrectly denied Mr. B.’s application for a 2009 PFD. Mr. B. has not severed his Alaska residency and he maintains the requisite intent to remain an Alaska resident indefinitely. Accordingly, Mr. B. is eligible for a 2009 PFD and the decision of the division should be reversed.

II. Facts

Mr. B. has numerous ties to Alaska. The specific date he and his family moved to Alaska is unknown, but it was prior to 2007, the qualifying year for the 2008 PFD, because Mr. B. received a 2008 PFD.¹ Mr. B. has an Alaska driver’s license.² His parents purchased a home in Kodiak and still live there. Mr. B. graduated with honors from Kodiak High School in June 2008³ and in August 2008 he enrolled in and began attending the Rensselaer Polytechnic

¹ Exh. 1 at pg. 1.
² Exh. 7 at pg. 8.
³ Exh. 7 at pgs. 5-7.

Institute in Troy, New York on a math and science scholarship.⁴ During the summer of 2009, he worked for the Kodiak Island Borough School District and he plans to return to that job each year.⁵ Mr. B.'s anticipated graduation date is May 2012.⁶

Mr. B. completed his 2009 PFD application online on January 12, 2009 – it was his first adult application.⁷ Because he was not in Alaska on the date of application, he was required to complete an adult supplemental schedule which asked for additional information from the applicant. In response to the question whether he would be returning to Alaska to remain indefinitely, Mr. B. answered “no”.⁸ His reason for answering “no,” which he explained to an eligibility technician who contacted him by telephone, was that he did not know if he would be able to find employment in Alaska following his graduation, so if he were offered a job outside of Alaska, he would take it.⁹ He also answered “no” because he knew he would be traveling back and forth from Alaska to New York for college through at least the middle of 2012, so in the short term, he would not be staying in Alaska indefinitely.¹⁰

The Permanent Fund Dividend Division (“division”) denied Mr. B.'s application initially and after an informal appeal because he did not have the requisite intent to remain an Alaska resident indefinitely at the time of his application.¹¹ This appeal followed.

III. Discussion

The division contends that Mr. B. is not eligible for the 2009 PFD because he did not maintain the requisite intent to remain an Alaska resident indefinitely throughout the qualifying year and through the date of application. Specifically, the division asserts that when Mr. B. answered “no” to the question whether he was returning to Alaska to remain indefinitely on his supplemental schedule, that he did not demonstrate the intent to return to Alaska indefinitely during the entire qualifying year and at the time he filed his application. The division argues that

⁴ Exh. 2; Exh. 5 at pg. 2.

⁵ Exh. 7 at pg. 10.

⁶ Exh. 2.

⁷ Exh. 1 at pg. 5.

⁸ Exh. 1 at pg. 3.

⁹ Exh. 3.

¹⁰ Exh. 7 at pg. 3.

¹¹ Exh. 6.

as a result, Mr. B. no longer meets the definition of “state resident” for PFD purposes and he is ineligible for the 2009 PFD.¹²

A “state resident” is defined in AS 43.23.095(7) as an individual who is physically present in the state with the intent to remain indefinitely, or if not physically present, intends to return and remain indefinitely. Under AS 01.10.055, an Alaska resident who is absent from the state remains a resident unless the person (1) “establishes or claims residency in another state” or (2) “performs other acts or is absent under circumstances that are inconsistent with the intent [to remain in the state indefinitely].”¹³

The term “establishes residency” is given a definite and precise meaning in AS 01.10.055(a): presence in Alaska with the intent to remain indefinitely and to make a home in the state. Under the doctrine of statutory construction *in pari materia*, a word or phrase used in one subsection of a statute is generally given the same meaning when repeated elsewhere in another subsection of the same statute. Thus, under AS 01.10.055(c), for Mr. B. to establish residency in another state, he must be physically present in that other state with the intent to remain indefinitely.

The Department has promulgated regulations to assist the division in assessing the eligibility of an applicant.¹⁴ Under 15 AAC 23.143(a) an individual’s intent to:

return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:

- (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
- (2) ties to another state or country that indicate continued residency in the other state or country; and

¹² Division’s position statement at 2.

¹³ AS 01.10.055(a), (c).

¹⁴ The Alaska Supreme Court has upheld regulations restricting eligibility for a PFD beyond the specific statutory requirements of AS 43.23.005(a) and AS 43.23.008. See *Church v. State, Dept. of Revenue*, 973 P.2d 1125 (Alaska 1999); *Brodigan v. Alaska Dept. of Revenue*, 900 P.2d 728 (Alaska 1995); *State, Dept. of Revenue, PFD Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *State, Dept. of Revenue, PFD Division v. Cosio*, 858 P.2d 621 (Alaska 1993).

(3) taken other action during the qualifying year, through the date of application, that is inconsistent with an intent to remain in Alaska indefinitely.¹⁵

When assessing whether an applicant has taken some action that may be considered inconsistent with the intent to return to Alaska and remain indefinitely, the applicant's acts should be considered in light of all the circumstances and not viewed in isolation.¹⁶

It is undisputed that Mr. B. had already established Alaska residency and that he is attending college in New York pursuant to an allowable educational absence. Contrary to the division's assertion, Mr. B. has not undertaken any action to sever his Alaska residency; he remains an Alaska resident for purposes of PFD eligibility. Mr. B. graduated from high school in Kodiak in May 2008 and that fall traveled to New York to begin his college tenure at the Rensselaer Polytechnic Institute. He still has his Alaska driver's license, his parents still live in Kodiak, and he considers their residence his home. Additionally, Mr. B. obtained summer employment working for the Kodiak Island Borough School District and he plans to return to that job each summer. Mr. B. wants to live in Alaska upon graduating from college in May 2012.

Neither has Mr. B. taken any action to *establish* residency in any other state. There is no distinction between resident and nonresident tuition at his school and he is attending on a math and science scholarship. He has not obtained a driver's license, voted or received any financial benefit based on being a resident of another state. Also, Mr. B. has not applied for work in another state or even made a decision to search for work in another state. Rather, the only thing that Mr. B. has done is acknowledge his awareness of the fact that his employment after graduating from college in May 2012 is uncertain. He wants to live in Alaska after graduating, but he is cognizant of the fact that he may not be able to obtain employment in the state.

Mr. B.'s awareness of his employment uncertainty in 2012 is the only thing the division can point to as a reason for denying his application for a 2009 PFD. Having this awareness does not constitute an action that severs Mr. B.'s intent to return to Alaska and remain indefinitely.

When viewed as a whole, the preponderance of the evidence supports a finding that Mr. B.'s actions have been consistent with maintaining Alaska residency. The division's argument

¹⁵ 15 AAC 23.143(a).

that Mr. B. did not meet the definition of an Alaska resident for purposes of his application for a 2009 PFD is rejected.

IV. Conclusion

Mr. B. remains a resident of Alaska for purposes of his application for a 2009 PFD. He has not undertaken any action that severs his Alaska residency and he maintains the requisite intent to remain an Alaska resident indefinitely. Mr. B. is therefore eligible for a 2009 PFD.

The decision of the division to deny M. G. B. a 2009 PFD is REVERSED.

DATED this 30th day of December, 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 25th day of January, 2010.

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

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

¹⁶ See AS 43.23.015(a) (“the commissioner shall consider all relevant circumstances in determining the eligibility of an individual.”)