

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

IN THE MATTER OF)
)
 L. B.)
)
2008 Permanent Fund Dividend)

Case No. OAH 09-0484-PFD
Agency Case No. 2008-061-2372

DECISION

I. Introduction

L. B. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. B. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. B.’s request, a formal hearing was held on October 29, 2009. Ms. B. appeared by telephone. PFD Specialist Bethany Chase represented the division by telephone.

Ms. B. has met her burden of proving by a preponderance of the evidence that she has remained an Alaska resident at all relevant times, that her absences during the qualifying year were allowable, and that she did not maintain her principal home in another state or country during the qualifying year or before the date of application. Ms. B. is therefore eligible for a 2008 permanent fund dividend.

II. Facts

Ms. B. first came to Alaska in 1988 at the age of six. She left the state for two years while her father was stationed in Georgia, and then returned in 1994. In October of 2004 Ms. B. went to South Carolina with her husband, J. B., although they were not yet married at the time. Mr. B. was planning to join the military, but he had some personal family matters to attend to first in South Carolina. After getting his affairs in order, Mr. B. did join the army, and in December of 2005 Ms. B. went with him when he was stationed at Fort Drum in New York. In August 2006 Mr. B. was deployed to Iraq, and Ms. B. returned to Alaska in September of 2006. Ms. B. stayed with her parents in Alaska for a year until her husband’s deployment ended in October 2007, when she went back to Fort Drum. Ms. B. returned to Alaska to stay in May of 2008, and Mr. B. rejoined her in September 2008 when he was discharged from the Army.

Still in her twenties, Ms. B. had not accumulated a lot of material possessions before she left Alaska, but she stored most of what she did own at her parents’ home while she was gone. Ms. B. maintained her Alaska driver’s license the entire time, and she has remained registered to vote in

Alaska. The B.s are now raising their two children in Alaska and they do not intend to leave the state again.

Ms. B. was absent from Alaska for a total of 80 days in 2007. Ms. B. provided credible testimony that when she left Alaska in 2004 and again in 2007 she left on a temporary basis to accompany her husband while he was serving stateside in the Army, and that she always intended to return to Alaska to remain indefinitely and make her home. Ms. B. answered the division's questions during the application process as truthfully as she could and fully disclosed her absences. Regardless of what she may have written or which boxes she checked on the various application forms, a preponderance of the evidence shows that any home Ms. B. maintained out of state was temporary in nature, and that her principal home has always been Alaska.

III. Discussion

In order to qualify for a permanent fund dividend, a person must be an Alaska resident all through the qualifying year and at the date of application.¹ A person establishes residency in Alaska by being physically present in the state with the intent to remain indefinitely and to make a home in the state.² A person who establishes residency and then leaves the state is no longer an Alaska resident if the person is absent under circumstances that are inconsistent with the intent to remain in the state indefinitely and to make a home in the state.³ An absence of less than 180 days during the qualifying year is allowable, so long as it is for a reason consistent with continuing Alaska residency.⁴ Except in certain circumstances that do not apply to this case, a person is not eligible for a dividend if, at any time from the beginning of the qualifying year up to the date of application, the person maintained her principal home in another state or country.⁵ At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was incorrect.⁶

The evidence shows that Ms. B. has remained an Alaska resident at all times. She left to accompany her fiancé as he took care of some matters in South Carolina and joined the Army, and she followed him when he was stationed in New York. But these were intended to be temporary absences by both of the B.s, not to last longer than Mr. B.'s limited period of service. Ms. B.'s

¹ AS 43.23.005(a)(2),(3).

² AS 01.10.055(a).

³ AS 01.10.055(c).

⁴ AS 43.23.008(a)(17)(A).

⁵ 15 AAC 23.143(d)(1).

⁶ 15 AAC 05.030(h).

intent and the temporary nature of her absences is shown by the fact that while Mr. B. was overseas for a period of over a year, Ms. B. came back home.

Ms. B. did not apply for 2006 and 2007 dividends, as she believed that the long periods of her absence in the qualifying years would make her ineligible, even though she remained an Alaska resident. Ms. B. argues that because she was absent for only 80 days in 2007, she should qualify for a 2008 dividend. Ms. B.'s argument is correct. A person may be absent for up to 180 days in the qualifying year for any reason, so long as the absence is consistent with the intent to return to Alaska to remain indefinitely and to make a home.⁷ Ms. B.'s absence to be with her husband for seven or eight months before he was discharged and able to return to Alaska in consistent with the intent to return to Alaska to remain indefinitely and to make a home in Alaska.

IV. Conclusion

Ms. B. has remained an Alaska resident since 1994. Ms. B. was absent from the state for less than 180 days during the qualifying year for reasons consistent with the intent to remain an Alaska resident. Ms. B. has not maintained her principal home in any other state. Ms. B. has met her burden of showing that the division's decision was in error and that she is eligible for a 2008 permanent fund dividend.

DATED this 16th day of December, 2009.

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

⁷ AS 43.23.008(a)(17)(A).
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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 14th day of January, 2010.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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