

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

In the Matter of:)	
)	
G. & E. L. M., Sr.)	
)	OAH No. 09-0498-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-062-1218

DECISION

I. Introduction

Mr. and Ms. M. applied for their 2008 Permanent Fund Dividends (PFD). The Division ruled that they were ineligible to receive the 2008 PFD because they failed to maintain their Alaska residency while absent from the state. Mr. and Ms. M. appealed that decision. At the informal appeal level they were again denied their 2008 PFD. They have appealed that decision to the formal appeal level. As explained below, the M. have not met their burden of proving the division’s decision was in error. Therefore, the decision to deny Mr. and Ms. M. application is affirmed.

II. Facts

Mr. and Ms. M. were married in Alaska but left the state when he was drafted.¹ They resided in Oregon for about 20 years before moving back to No Name in 2003 where they remained until leaving to return to Oregon in November, 2007.² Mr. M. had been employed by the City of No Name . When he resigned, he gave as a reason “leaving town.”³

Mr. and Ms. M. each applied for a 2008 PFD. They indicated that they were absent from the state for medical reasons associated with Mr. M.’s health and, although they expected their absence to be temporary, they had no anticipated date of return.⁴ Mr. M. explained that they left after a Veterans Administration (VA) representative in No Name . informed him that he could receive a partial disability benefit but he would need to travel to Oregon to become qualified for the benefit. He has since been awarded a 20% disability rating.⁵

¹ M. Testimony.
² Exhibit 1 page 7.
³ Exhibit 13 page 4.
⁴ Exhibit 1 pages 2, 4, 7, & 9.
⁵ M. Testimony.

While in Oregon, the M. have been living in their son's home. When they left Alaska they moved all of their household belongings. The belongings were first stored in a storage unit and are now stored in their son's garage. Their only bank account is in Alaska. Mr. M. has not returned to Alaska since leaving in 2007; Ms. M. has returned to Alaska once to visit family for an extended visit in 2008. They also own undeveloped property in Klawock, Alaska.

Mr. and Ms. M. maintain they intend to return to Alaska and are absent for an allowable reason under AS 43.23.008. The division argues that they have severed residency and because they are not residents, Mr. and Ms. M. cannot be allowably absent.

III. Discussion

There is no question that Mr. and Ms. M. were Alaska residents for purposes of the PFD program prior to leaving for Oregon in November of 2007. The question in this appeal is whether they remained eligible for a 2008 PFD once they moved from Alaska.

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.⁶ The qualifying year for the 2008 PFD is 2007.⁷ 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.⁸ A person who establishes residency and then leaves the state is no longer an Alaska resident if the person establishes residency in another state or is absent under circumstances that are inconsistent with the intent to remain in the state indefinitely and to make a home in the state.⁹

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 the M. to establish residency in another state, they must be physically present in that other state with the intent to remain indefinitely.

In determining residency, an important element is the definite or indefinite nature of a person's intent to remain in Alaska. The converse is true when determining whether a person is

⁶ AS 43.23.005(a)(2), (3).

⁷ AS 43.23.095(6).

⁸ AS 01.10.055(a).

⁹ AS 01.10.055(c).

absent under circumstances that are inconsistent with Alaska residency. This is not to say that every person who leaves the state must know their precise date of return in order to retain residency. But persons who intend to return to Alaska to remain and make their home can be expected to have at the least a general sense of when they will return, or have their returns contingent on events that can reasonably be expected to occur within an identifiable period of time such as graduation from college.

To prevail, Mr. and Ms. M. must establish that it is more likely than not that they remain Alaska residents while absent from the state.¹⁰ They do this by pointing to evidence already in the record or adding evidence to the record. Mr. and Ms. M. presented some evidence of continued ties to Alaska: undeveloped property in Klawock, a bank account in Alaska, and relatives. They also have relatives in Oregon so this fact is neutral.

The fact which weighs heaviest against them is that they transported all of their household goods on instead of leaving them with a relative or in a storage facility in No Name ..¹¹ Additionally, Mr. M. resigned his position with the City of No Name . rather than request leave or leave without pay.¹² The record is strongly indicative of a presence in Oregon with intent to remain indefinitely. Therefore, they have established an intent to remain indefinitely in a place other than Alaska and by doing so are no longer residents of Alaska for purposes of the 2008 PFD.

Because Mr. and Ms. M. do not meet the residency requirement, the question of whether their absences are allowable is not addressed.

IV. Conclusion

G. and E. L. M., Sr. failed to show that it was more likely than not that they were eligible for the 2008 dividend. Nothing in this decision precludes either of them from reestablishing their resident status and thus becoming eligible for future PFDs.

DATED this 28th day of December, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁰ 15 AAC 05.030(h)

¹¹ Exhibit 3, page 2.

¹² Exhibit 13, page 4.

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 29th 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.]