

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

IN THE MATTER OF)
)
 S. A.)
) Case No. OAH 09-0511-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

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

Mr. A. was not physically present in Alaska all through the qualifying year, and his absence was not for any of the specified reasons that a person may be absent from the state and still qualify for a dividend the following. Therefore, Mr. A. is not eligible for a 2008 dividend.

II. Facts

Mr. A. has lived in Alaska for many years and has been applying for and receiving dividends since 1987. In 2004 Mr. A.’s wife was accepted to medical school in Portland, Oregon, and Mr. A. went to Portland to accompany her and care for their daughter while she studied. Upon arriving, the couple rented an apartment in Portland. In 2005 Mr. A. sold his house in Juneau because it had been sitting vacant and the mortgage payment was unduly burdensome. Around the end of 2005 he bought a house in Portland and the couple moved there from the apartment they had been occupying.

In February of 2007 the couple separated after Ms. A. filed for legal separation in Oregon Circuit Court. When she filed for legal separation, Ms. A. signed a jurisdictional affidavit stating that she was a resident of Oregon and had been for at least six months. Mr. A. rented an apartment just a few minutes’ walk from his house and remained in Portland to be near his daughter and to work on reconciliation in compliance with the teachings of his faith. The efforts at reconciliation were not successful, and the A.s’ divorce was finalized in September of 2009.

Mr. A. has an interest in an auto repair business in Juneau. Mr. A.’s most recent return to Alaska was for about ten days in July of 2007 to take care of taxes and various business matters. In

June of 2006 he returned for a short time after an accident occurred at the place of the business, and he may have made one other return trip that year. Mr. A. has worked part-time while in Portland, but he has not maintained permanent full-time employment.

Mr. A. has intended to return to Alaska while absent. He originally planned to return to the state when his wife graduated. With their divorce completed just one month before the hearing, there appears to be less certainty in Mr. A.'s plans. Mr. A.'s ex-wife recently obtained a job in Washington State performing her medical residency, and Mr. A. has shared custody of their daughter, who is now in high school. At this point, one of Mr. A.'s principal concerns is being with his daughter as much as possible and providing continuity in her education while he and Ms. A. share custody.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for a reason listed in AS 43.23.008.¹ That statute lists seventeen reasons that a person may have been absent from Alaska during the qualifying year and still receive a dividend. Two of the allowable reasons for an absence from the state are:

(1) receiving secondary or postsecondary education on a full-time basis;

* * * * *

(13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident....

Ms. A. was absent from Alaska receiving postsecondary education on a full-time basis during the qualifying year, but there are two reasons that Mr. A. may not qualify under subparagraph (13) above. The first is that it is questionable whether Mr. A. could have been considered to have been "accompanying" Ms. A. when they had separated and were living in two different households, even if the households were very close to each other and they had frequent contact caring for their daughter and trying to save their marriage.

The second reason is more absolute. Subparagraph (13) above requires that the person being accompanied be "another eligible resident." Even if she was receiving postsecondary education on a full-time basis, Ms. A. was not eligible for a dividend because she claimed in a court document to be a resident of Oregon. According to 15 AAC 23.143(d)(8), "an individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the

individual has...disclosed in a court proceeding or affidavit that the individual is a resident of another state or country.” Because Ms. A. filed the affidavit in Exhibit 13 during 2007 stating that she was a resident of Oregon, she is not eligible for a 2008 dividend. Therefore, even if Mr. A. was accompanying her as a spouse while she attended school, neither of them could qualify for 2008 dividends. There are not any other allowable absence provisions that would apply to Mr. A.

At the hearing, Mr. A. explained that under the circumstances it made no sense for him to return back and forth between Alaska while his daughter is in school, even though he has intended to ultimately return to Alaska. Mr. A. is clearly correct on this point, and it not surprising that his daughter’s wellbeing is his principal concern. But it is also true that PFD eligibility turns on more than just being an Alaska resident. One of the general rules is that the applicant must have been physically present in Alaska all through the qualifying year. There are limited exceptions to this rule, and none of them apply to Mr. A. for the 2008 dividend year. While Mr. A.’s decision to remain in Portland during 2007 is understandable, it does mean that, under the circumstances, he is not eligible for a 2008 dividend.

IV. Conclusion

Mr. A. was not physically present in Alaska all through the qualifying year, and his absences do not fit within the specified allowable reasons that a person may be absent from the state during the qualifying year and still be eligible for a dividend. The division was correctly applying the law when it made the decision to deny Mr. A.’s application for a 2008 permanent fund dividend.

DATED this 21st day of December, 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 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.]