

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

In the Matter of)	
)	
C. A. G.)	
and minor child S. G.)	
)	
<u>2009 Permanent Fund Dividend</u>)	OAH No. 09-0565-PFD Agency No. 2009-008-7627 & 7827

DECISION

I. Introduction

C. A. G. timely applied for a 2009 permanent fund dividend (PFD) for herself and her minor child, S. The Permanent Fund Dividend Division (“division”) determined that they were ineligible and denied their applications initially and at the informal appeal level. Ms. G. requested a formal hearing, which was held on November 30, 2009. Both Ms. G. and the division’s representative, Peter F. Scott, appeared by telephone.

Based on the evidence and after careful consideration, the division’s denials are affirmed. Ms. G. maintained her principal home in another state during the qualifying year. She and S. are therefore not eligible for a 2009 dividend.

II. Facts

Ms. G. is a lifelong Alaskan. She has filed for and received the PFD continuously since 1985.¹ In May 2003, Ms. G. married T. G., a member of the military serving at Ft. Richardson.² After they were married, Ms. G. continued to apply for and receive the PFD, but her husband never applied, apparently believing it would not be ethical because he was not born in Alaska.³

In 2008, Mr. G. was transferred by the military to Colorado pursuant to a permanent change of station (PCS). The family left Alaska on June 21, 2008,⁴ pulling a small U-Haul trailer; the military shipped the remainder of their household possessions.⁵ They stayed in a hotel upon arriving in Colorado and within 4-5 days had located a rental home near Ft. Carson.⁶ Ms. G. and S. came to Alaska for the Thanksgiving holiday in 2008 – their stay lasted 16 days, after which they returned to Colorado. In total, Ms. G. and S. were absent from Alaska for 177 days in 2008.

¹ Division’s formal hearing position statement at pg. 1.
² *Id.*
³ Exh. 4 at pg. 3.
⁴ Exh. 12 at pg. 2.
⁵ Testimony of Ms. G.
⁶ *Id.*

On January 4, 2009, Ms. G. filed her and S.'s PFD applications online from Colorado. She stated she was not in Alaska at the time of filing and listed their physical address in Colorado. On her Adult Supplemental Schedule, Ms. G. answered "no" to the question "Are you returning to Alaska to remain indefinitely?"⁷

On or about May 10, 2009, Mr. G. was ordered to deploy to a war zone overseas on a temporary change of station (TCS). The family vacated their rental home in Colorado and Ms. G. and S. returned to Alaska about June 1st.⁸ According to Ms. G., her husband is scheduled to return to Ft. Carson in June 2010.⁹ After he obtains housing there, he will come to Alaska to collect the family again and return to Colorado, where he plans to continue with his military career.

Based on her answer to the question about returning to Alaska to remain indefinitely, the division denied the applications of C. and S. G. for the 2009 PFD on May 15, 2009.¹⁰ After she was back in Alaska, Ms. G. filed a request for an informal appeal of the denial on June 15, 2009, stating:

I am an active duty spouse and I didn't understand the question fully. I fully intend to return to Alaska and have already returned to the state.^[11]

The division denied the applications at the informal appeal level. Ms. G.'s request for a formal hearing followed.

III. Discussion

The qualifying year for the 2009 PFD is 2008.¹² To be eligible for a permanent fund dividend, a person must be a state resident during the entire qualifying year and on the date of application.¹³

15 AAC 23.143(d) contains a list of actions that, if taken during the qualifying year, will make a person ineligible for the following year. In the case of a person who has taken any one of these actions, the division need not investigate any further to determine whether the applicant maintains the proper intent to remain an Alaska resident; the person is simply ineligible the

⁷ Exh. 1 at pg. 4.
⁸ Testimony of Ms. G.
⁹ Testimony of Ms. G.
¹⁰ Exh. 2.
¹¹ Exh. 3 at pg. 2.
¹² AS 43.23.095(6).
¹³ AS 43.23.005(a)(2)-(3) (emphasis added).

following year, regardless of residency. An example of a disqualifying action is buying a resident fishing license in another state. Even if there is no dispute that the applicant continues to be an Alaska resident, if he buys a resident fishing license in another state he cannot qualify for a dividend the following year.

One of the disqualifying actions is if an individual:

- (1) has maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed
 - (A) in AS 43.23.008(a)(1) – (3) or (9) – (11); or
 - (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in this paragraph.^[14]

Thus, Alaska residents may not maintain their principal home in another state at any time during the qualifying year and still qualify for a dividend, unless they are full-time students, serving in the military, serving in or working for Congress, working for the State of Alaska in a field office, or accompanying as a spouse or child an eligible person absent for one of these reasons.

Applied to this case, the law means that Ms. G. is not eligible for a dividend if she has maintained her principal home in another state at any time from the beginning of the qualifying year through the date of application, unless she was allowably absent for one of the specific reasons listed in the above regulation. Had Ms. G. been accompanying a spouse who was an eligible Alaska resident and who was absent serving in the military, this rule would not apply to her. But Ms. G.'s husband did not apply for a 2009 dividend, so he is ineligible for that reason. Regardless whether he would have been eligible for a dividend if he had applied, the first of the eligibility criteria for a PFD is that the individual actually applies.¹⁵ Mr. G. did not apply for a 2009 dividend; he is therefore not eligible. Thus, the fact that Ms. G. was accompanying her husband is not relevant to this case.

Ms. G. argues that she maintained her Alaska driver's license and did not register to vote in another state.¹⁶ Regardless whether she remained an Alaska resident at all times during her absence, without one of the exceptions noted above the law is clear that even an Alaska resident will be ineligible for a dividend if she maintains her principal home in another state during the

¹⁴ 15 AAC 23.143(d)(1).

¹⁵ AS 43.23.005(a)(1).

qualifying year. Even though Ms. G. apparently returned to Alaska in mid-2009, the evidence clearly shows that during 2008 and at her date of application, Ms. G. was maintaining her principal home in Colorado. She is, therefore, ineligible for a 2009 dividend. Ms. G. may disagree that a person in her situation should be denied a dividend, but any different result would first require a change in the law.

IV. Conclusion

Ms. G., with minor child S. in her custody, maintained her principal home in another state during 2008, the qualifying year for the 2009 PFD. They were not absent for an allowable reason, so C. G. and S. G. are not eligible for 2009 dividends and the decisions of the division to deny their applications are AFFIRMED.

DATED this 8th day of February, 2010.

By: _____
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8th day of March, 2010.

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

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