

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

In the Matter of:	)	
	)	
E. M. T.	)	OAH No. 09-0581-PFD
	)	Agency No. 2009-037-4969
<u>2009 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

E. T. applied for her 2009 Permanent Fund Dividend (PFD). Her application was denied because she had answered “no” to the question asking whether she intended to return to and remain in Alaska indefinitely. She requested an informal appeal and was again denied. Ms. T. has now requested a Formal Appeal by Correspondence.

**II. Facts**

Ms. T. maintains her principal home in Alaska where she lives with her parents.<sup>1</sup> She was out of Alaska attending Washington State University for more than 90 days during the 2008 qualifying year.<sup>2</sup> She pays non-resident tuition to WSU.<sup>3</sup>

In completing her Adult Supplemental Schedule, Ms. T. answered “no” to question 4B which asks, “are you returning to Alaska to remain indefinitely.”<sup>4</sup> After the Division received her application, it contacted Ms. T. The Division’s file notes state:

I called and talked to E. about her answer to are you returning to Alaska to remain indefinitely. She verified with me over the phone that she marked No because she isn’t sure whether she is going to return to Alaska after graduation to remain indefinitely. She said she will be returning but doesnt [sic] know for how long. 5/2012 is her graduation date.<sup>5</sup>

During the appeal process, Ms. T. indicated that she was confused as to how question 4B applied to students attending an out of state college.<sup>6</sup> She stated that she does intend to remain a permanent resident of Alaska.<sup>7</sup> She further stated that she does intend to return to Alaska when school is done.<sup>8</sup>

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<sup>1</sup> Exhibit 1, page 3.  
<sup>2</sup> Exhibit 7, page 2.  
<sup>3</sup> Exhibit 2.  
<sup>4</sup> Exhibit 1, page 3.  
<sup>5</sup> Exhibit 3  
<sup>6</sup> Exhibit 5, page 2.  
<sup>7</sup> Exhibit 5, page 2.  
<sup>8</sup> Exhibit 7, page 2.

### III. Discussion

To qualify for the 2009 PFD, an applicant must meet the eligibility requirements during all of the 2008 qualifying year. As applied to Ms. T.'s application, that means she must have been an Alaska resident on the date of her application as well as during all of 2008.<sup>9</sup> To be an Alaska resident, one must have the intent to remain in the state indefinitely.<sup>10</sup>

Question 4B on the Adult Supplemental Schedule can be confusing for students in Ms. T.'s situation. She returns to Alaska for school breaks, but can not state that she intends to remain indefinitely because she will be going back to school in Washington after each break. It is only after her graduation in 2012 that she will be able to return to Alaska to remain indefinitely.

At the same time, attending a post-secondary school for the purpose of obtaining a university degree is an allowable absence for PFD eligibility.<sup>11</sup> It would be inconsistent with legislative intent to penalize an applicant for honestly stating that her return trips to Alaska are for definite periods of time since she intends to attend school out of state each semester. The information Question 4B attempts to elicit is whether the applicant intends to return to Alaska indefinitely after graduation. One who expects to be in college for several years but intends to return to Alaska after graduation and also intends to remain in Alaska indefinitely after graduation can properly answer "yes" to Question 4B on the Adult Supplemental Schedule.

The Division's denial of Ms. T.'s application is understandable. Her statements to the Division were ambiguous. She said that she does intend to return to Alaska after graduation, but was not sure how long she would remain.<sup>12</sup> She also stated that she intended to remain an Alaska resident, but did not specifically state that she intended to remain in Alaska indefinitely.<sup>13</sup>

While this is a close case, Ms. T. has established by a preponderance of the evidence that she is eligible to receive her 2009 PFD. She has lived in Alaska since birth.<sup>14</sup> There is no evidence that she has taken steps to sever her Alaska residency. Her initial statement to the Division was that she intended to return but does not know for how long.<sup>15</sup> Not knowing "for how long" is technically an indefinite period of time. When viewed in the context of her additional answers during the appeal process, Ms. T. has shown that she intends to keep her ties

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<sup>9</sup> Alaska Statute AS 43.23.005(a).

<sup>10</sup> AS 01.10.055.

<sup>11</sup> AS 43.23.008(a); Alaska Regulation 15 AAC 23.163(c)

<sup>12</sup> Exhibit 3, page 1.

<sup>13</sup> Exhibit 5, page 2.

<sup>14</sup> Exhibit 1, page 1; Exhibit 7, page 2.

<sup>15</sup> Exhibit 3.

to Alaska while attending WSU and intends to return to Alaska for an indefinite period of time after she graduates. Accordingly, she has not lost her status as an Alaska resident.

**IV. Conclusion**

Ms. T. has shown by a preponderance of the evidence that she has the required intent to remain in Alaska indefinitely, and therefore has shown that she is still an Alaska resident. The Division’s decision is reversed and Ms. T. is eligible to receive the 2009 PFD.

DATED this 5<sup>th</sup> day of January, 2010.

By: Signed \_\_\_\_\_  
Mark T. Handley  
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 3rd day of February, 2010.

By: Signed \_\_\_\_\_  
Signature  
Mark T. Handley \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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