

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

IN THE MATTER OF)
)
 M. V.)
) Case No. OAH 09-0599-PFD
 2009 Permanent Fund Dividend)
_____)

DECISION

I. Introduction

M. V. appeals a decision of the Permanent Fund Dividend Division to deny her application for a 2009 permanent fund dividend. At Ms. V.'s request, a formal hearing was held on December 22, 2009. Ms. V. appeared by telephone. PFD Specialist Peter Scott represented the PFD Division.

Ms. V. became an Alaska resident before the beginning of the qualifying year and meets all eligibility criteria for a 2009 permanent fund dividend. Her application should be granted.

II. Facts

M. V. and R. E. met in Ohio through their jobs at a company called CCT. Ms. V. had owned a house in Ohio, while Mr. E. had been living in a rented home. As their relationship developed, Mr. E. eventually moved in with Ms. V. at her house.

In 2007 Mr. E. was offered a job with BP E. in Anchorage. Around the end of October or early in November of 2007 Ms. V. and Mr. E. talked the matter over, and decided they would both quit their jobs at CCT and move together to Alaska. Mr. E. gave his notice at CCT, and the couple came to Anchorage on December 14, 2007. On December 16, 2007, Ms. V. and Mr. E. signed a lease on a home in Anchorage. Mr. E. started work at his new job on December 17, 2007. That same day, Ms. V. returned to Ohio, where she was still employed at CCT.

Ms. V. returned to work in Ohio, but a few days later on December 21, 2007, she gave notice to CCT that she was quitting effective January 4, 2008. Ms. V. had placed her home on the market, and she accepted an offer some time in December of 2007. Because of the buyer's schedule, the sale did not close until January 18, 2008. Ms. V. stayed at the house, packing things up and getting ready to move. A moving company picked up Ms. V.'s belongings on January 8, 2008, and delivered them to Anchorage on January 29, 2008. Ms. V. returned to Alaska on January 10, 2008. She quickly found a job, and started working in February, 2008. Ms. V. obtained an Alaska driver's license on August 15, 2009. Ms. V. and Mr. E. have lived together in Alaska ever since.

III. Discussion

In order to qualify for a permanent fund dividend, an individual must have been an Alaska resident all through the qualifying year.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

In the case where a person comes to Alaska before the beginning of the qualifying year, leaves the state, and then returns to Alaska to stay after the beginning of the qualifying year, it can be a fine question: Did the person come to Alaska to consider moving to the state, decide to become a resident, then go back to the old state to sever residency there before returning to Alaska to become a resident? Or did the person move to Alaska, become a resident, and then make a trip back to the old state to tie up some loose ends and complete the move? This question often arises when, as here, the first trip is made before the beginning of the qualifying year and the second trip is made afterward.

In deciding whether the person became a resident on her first arrival, the underlying question is the person's intent. The division correctly cites 15 AAC 23.143(a), which states in part that "an individual's intent to establish residency, remain indefinitely in Alaska, to return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere." The meaning of this regulation is that a person's intent is to be measured by what the person does, not whether the person has met some formal litmus test, such as obtaining a driver's license or registering to vote. When a person's intent is unknown, one must take a broad look at the person's actions to determine what the intent was. But it must always be remembered that it is intent, not the meeting of some formal test, that is being determined.

The division incorrectly states that "to establish residency in Alaska, an individual must establish and maintain 'customary ties indicative of Alaska residency.'" This suggests that there are certain customary ties that apply to all people, and so long as applicants establish these customary ties they will meet a bright-line test of residency. This is not the meaning of the regulation, nor could it be. There is no published list of "customary ties," nor is it clear whose customs are to be considered. Alaska is known for colorful individualists who never establish what some people would consider "customary ties" of residency, yet have lived here all their lives with no intent to

¹ AS 43.23.005(a)(3).

² AS 01.10.055(a).

leave. One must consider all the circumstances, remembering that the question is not whether the person established customary ties; the question is whether the person was physically present in the state with the intent to remain indefinitely and make a home.

Unlike many people thinking of moving to Alaska, Ms. V. did not come to the state first to take a look around, see how she liked it, maybe interview for a job, and then decide to move here. Though not married, Ms. V. and Mr. E. had joined their lives to the degree that they make mutual decisions about where they will live. They decided to move to Alaska before the first time they came. Mr. E. and Ms. V. came to Alaska as partners with the full intent of immediately establishing their principal home in Anchorage. The partner with the job went to work immediately, while the other went back to Ohio to finish packing, sell the old house, and take care of any remaining business. When they rented their Anchorage house or apartment in December of 2007, it became Mr. E.'s and Ms. V.'s principal home, the place they intended to remain indefinitely. Though she did stay there for ten days in 2008, Ms. V.'s old house was no longer her principal home. While Ms. V. still had a job in Ohio, it is clear that she had already decided to quit that job when she first came to Alaska, and the job became nothing more than a temporary obligation after she gave her notice in December of 2007.³

Another way of evaluating where Ms. V.'s residency properly lay after she arrived in Anchorage in 2007 would be to reverse the situation; if Ms. V. had been an Alaska resident moving to Ohio, under opposite circumstances, at what point would she have ceased to be an eligible Alaska resident? Having made up her mind to move and rented an apartment in the new state, it is hard to imagine the division would still consider her to be an Alaska resident at the end of 2007.

IV. Conclusion

Ms. V. moved to Alaska in December of 2007. Although she returned to her previous state of residence to complete the move and finish severing her ties there, Ms. V. had been physically present in Alaska with the intent to remain indefinitely and make a home before the beginning of

³ Under 15 AAC 23.143(d)(4), a person with permanent full-time employment in another state during the qualifying year is not eligible for a dividend, except in certain cases. Like other disqualifying actions in 15 AAC 23.143(d), this action is not determinative of residency; it merely means the division need not inquire into the applicant's residency. In spite of the fact that she still had a full-time job in Ohio, Ms. V. became an Alaska resident in December of 2007. Her job was not permanent after she gave notice in December of 2007. It was not necessary for Ms. V. to quit her job before becoming an Alaska resident by being present in the state with the intent to make her home here. It is true that in many cases the fact that the applicant had not quit her job in the other state is considered strong evidence that the person had not yet formed the intent to remain in Alaska and make her home here on the first arrival. In this case, it is more likely than not that Ms. V. had made up her mind to quit her old job before the first time she came to the state.

2008, and thus became an Alaska resident. Ms. V.'s application for a 2009 permanent fund dividend should be granted.

DATED this 12th day of February, 2010.

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 11th day of March, 2010.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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