

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

In the Matter of: )  
 )  
 J. R. W. )  
 )  
 ) OAH No. 09-0669-PFD  
 ) Agency No. 2008-048-2478  
2008 Permanent Fund Dividend )

**DECISION**

**I. INTRODUCTION**

Mr. W. applied for and received his 2008 Permanent Fund Dividend (PFD). During the processing of his 2009 PFD, the Permanent Fund Dividend Division (Division) determined he was not eligible for a 2008 PFD and determined that Mr. W. should repay this amount. Mr. W. unsuccessfully contested the Division's determination at the informal appeal level. He requested a formal appeal, and a hearing was held on January 25, 2010. Mr. W. appeared and testified at the hearing in person.

The Division's decision is reversed because Mr. W. was eligible to receive the 2008 PFD. He did not establish a principal residence in another state, nor did he claim Colorado residency when seeking public assistance benefits, and thus he did not disqualify himself as the Division contended.

**II. FACTS**

The qualifying year for the 2008 PFD was 2007. In applying for the 2008 PFD, Mr. W. properly indicated that he was not currently in Alaska,<sup>1</sup> that he had left Alaska on October 3, 2007 to receive medical treatment,<sup>2</sup> and that he intended to return to Alaska in October of 2008.<sup>3</sup> Mr. W. provided verification that he was receiving medical treatment in Colorado during the 2007 qualifying year.<sup>4</sup>

Mr. W. testified at the hearing that while in Colorado he applied for food stamps, housing assistance, and interim disability benefits. He further testified that when making these applications, he informed the various case workers that he was in Colorado for one year to obtain

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<sup>1</sup> Exhibit 1, page 1.  
<sup>2</sup> Exhibit 1, page 2.  
<sup>3</sup> Exhibit 1, page 3.

medical treatment from the Veterans Administration and that he would be returning to Alaska after that one-year period was over.

Mr. W. received a Colorado driver license on July 1, 2008.<sup>5</sup> He testified that he was stopped by the police and told he was required to get a Colorado license or risk being jailed. He also testified that he was not able to vote in Colorado or get a resident fishing license because he was not a Colorado resident.

Mr. W. was sent a letter from the State of Colorado dated October 1, 2008 stating that his Colorado benefits would end since he was no longer a resident of Colorado.<sup>6</sup> Exhibit 5 is an e-mail from J. S. with the State of Colorado. She states that Mr. W. received public assistance benefits, and she also states that one must be a Colorado resident in order to receive these benefits.

Exhibit 6, pages 2 – 6 is a print out of Mr. W.’s housing assistance application. This document does not contain a space indicating state of residency and does not contain a statement that an applicant must be a Colorado resident to receive benefits. Exhibit 6, pages 9 – 11 is a Statement of Rights and Responsibilities related to public assistance signed by Mr. W. This statement, signed April 26, 2008, does not address a requirement of Colorado residency.

Exhibit 9, pages 5 and 6 is a copy of instructions for people applying for some form of Colorado public assistance. Numbered paragraph 4 of this document does indicate that applicants must be Colorado residents. Exhibit 9, page 7 indicates that Mr. W. received energy payment assistance under Colorado’s LEAP program. Exhibit 9, page 8 is an instruction form for this assistance which indicates that one must be a permanent Colorado resident to receive payments under this program.

On his 2008 Adult Supplemental Schedule, Mr. W. answered “no” to question Q which asks whether he “Obtained benefits as a result of establishing or maintaining a claim of residency in another state or country.”<sup>7</sup>

### **III. DISCUSSION**

The Division’s position is that Mr. W. is not eligible for the 2008 PFD because he claimed Colorado residency to obtain public assistance benefits.<sup>8</sup> In addition, the Division

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<sup>4</sup> Exhibit 1, page 5; Exhibit 3, page 1.

<sup>5</sup> Exhibit 9, page 2.

<sup>6</sup> Exhibit 9, pages 9 – 11.

<sup>7</sup> Exhibit 1, page 4.

asserts that Mr. W. is ineligible because he did not maintain his principal home in Alaska during his absence.<sup>9</sup> Mr. W. asserts that one should not lose eligibility based on the need to seek public assistance as that unconstitutionally discriminates against low income individuals who seek out of state medical treatment.

The PFD statutes and regulations set out certain residency and eligibility requirements. Some of the requirements have strict rules which sometimes create harsh results. These rules are necessary, however, for the Division to efficiently process hundreds of thousands of applications every year. At the Formal Appeal level, the Administrative Law Judge must apply the law as written to the facts; this is not the appropriate forum for ruling on constitutional claims.

#### **A. Residency**

To receive a PFD, an applicant must be an Alaska resident during the entire qualifying year as well as on the date of the application.<sup>10</sup> Residency is defined in statute and is based on the individual's subjective intent:

A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.<sup>11</sup>

There is no dispute here that Mr. W. established residency in Alaska.<sup>12</sup> His absence to seek medical treatment is not inconsistent with the intent to return to Alaska indefinitely as required by AS 01.10.055(a). This is particularly true here where Mr. W. testified that in order to receive this treatment through the VA in Alaska, he would have had to wait for an extended period of time. Mr. W. also did not perform other acts inconsistent with the intent to remain an Alaska resident.

Mr. W.'s testimony was credible. He stated that he informed his Colorado caseworkers that he was only in Colorado temporarily and that he would be returning to Alaska after one year. Significantly, nothing in the record shows Mr. W. making an affirmative claim of residency in

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<sup>8</sup> Formal Hearing Position Statement, pages 1 – 2.

<sup>9</sup> Formal Hearing Position Statement, page 3.

<sup>10</sup> Alaska Statute AS 43.23.005(a)(2) & (3).

<sup>11</sup> AS 01.10.055(c). *See also* AS 43.23.095(7) defining state resident for PFD purposes.

<sup>12</sup> Formal Hearing Position Statement, page 1.

Colorado. Mr. W. has met his burden of proving that he maintained his Alaska residency during the 2007 qualifying year and through the date of his application.<sup>13</sup>

### **B. Eligibility**

Being a state resident is not the only eligibility requirement, however. Alaska Regulation 15 AAC 23.143(d) contains a list of acts which make an applicant ineligible to receive a PFD even if that person remains a resident. The Division claims that two of these are applicable here.

First, the Division claims that Mr. W. is not eligible because he did not maintain his principal home in Alaska during the qualifying year.<sup>14</sup> Mr. W. is a renter who receives housing assistance payments. He testified that he had received this assistance in Alaska and transferred his benefits to Colorado. He could not afford one home without financial assistance from the government, much less two. He legitimately traveled to Colorado to receive medical treatment and he needed a roof over his head while in Colorado. While some individuals are able to leave household goods in Alaska while out of state for medical treatment, Mr. W. testified that he sold anything he didn't take with him to finance his travel.

Mr. W.'s time in Colorado was always intended to be temporary and he did in fact return to Alaska at the conclusion of his medical treatment. When applying for housing assistance, he informed his caseworker that his stay in Colorado was temporary. Mr. W. was in Colorado on an allowable absence: seeking continuous medical treatment.<sup>15</sup> Most people cannot afford to maintain two homes, and to require a renter to continue paying for a home in Alaska while out of state seeking medical treatment would in many cases defeat the purpose of the medical treatment allowable absence.

In a previous case, the Commissioner of Revenue overturned a hearing officer's determination that the applicant had maintained his principal home in a house he owned in Washington State when the applicant was living in the house and had not maintained a dwelling or stored any belongings in Alaska during the absence.<sup>16</sup> The Commissioner's decision on reconsideration stated that:

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<sup>13</sup> Compare, *In The Matter of D.C.*, OAH Case No. 07-0653 PFD. In *D.C.*, the Department of Revenue held that receipt of food stamps in Oregon based on a claim of *temporary* residence in Oregon would not be sufficient to sever the applicant's Alaska resident status.

<sup>14</sup> 15 AAC 23.143(d)(1). "Principal Home" is not defined by statute or regulation.

<sup>15</sup> AS 43.23.008(a)(5).

<sup>16</sup> *In the Matter of J.*, Caseload No. 990017 (Dept. of Revenue, January 2000), quoted in *In The Matter of K.G.*, OAH Case No. 09-0257 PFD.

Disqualification under 15 AAC 23.143(d)(1) occurs when the individual establishes or maintains a residence outside the state under circumstances that demonstrate the residence is the individual's primary home. The failure to maintain an interest in residential property in Alaska during an allowable absence, however, does not necessarily make that individual's temporary, out-of-state living situation his or her primary home. Not everyone has a primary home at all times. One can be homeless or living somewhere temporarily. The fact that applicants do not, at any particular moment, have an empty residence in Alaska waiting for their return does not make wherever they are at any given moment their primary home. The regulation does not require that a "principal home" be maintained in Alaska, and the lack of such a residence should not be held against an applicant absent other evidence to the contrary. An Alaskan's living situation during an absence for an allowable reason does not constitute establishment of a primary home unless the living situation demonstrates that the individual no longer has the requisite intent for Alaska residency.

Mr. W. was not required to maintain a principal home in Alaska during his absence. He was only precluded from establishing a primary home in some other state during this absence. While his absence from Alaska was lengthy, Mr. W. has met his burden of proving that he did not establish a primary or principal home in Colorado.

The next question is whether Mr. W. was ineligible to receive a PFD because he: obtained any other benefit or benefits as a result of establishing or maintaining any claim of residency in another state or country or by disclaiming Alaska residency.<sup>17</sup>

The act of obtaining benefits by making a claim of residency in another state is an absolute bar to receipt of a PFD even if the applicant did not understand the full consequences of making that claim.<sup>18</sup> Here, there is no dispute that Mr. W. obtained benefits.<sup>19</sup> Mr. W. does, however, assert that he did not make a claim of Colorado residency in order to obtain those benefits.

Mr. W. testified that he did not claim Colorado residency when he applied for benefits. He testified that he specifically told his case workers that he was only in Colorado temporarily. He did admit, however, that he might have signed something without reading it. If Mr. W. signed a document claiming Colorado residency, this could make him ineligible even if he was not fully aware of the impact of what he was signing. That is not an issue here because none of the documents signed by Mr. W. contain an affirmative statement claiming Colorado residency.

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<sup>17</sup> 15 AAC 143(d)(17).

<sup>18</sup> Compare, *In The Matter Of J.T.L.*, OAH Case No. 09-0039 PFD.

<sup>19</sup> There is a question as to whether he obtained these benefits prior to the date of his application. That question need not be resolved in this decision.

While there is no evidence of a direct claim of Colorado residency, there is some evidence that Mr. W. should have known that applying for benefits in Colorado would be considered a claim of residency. Exhibit 9, page 6, states that an applicant must bring information showing that he is a Colorado resident. Assuming without deciding that this document puts an applicant on notice that he must claim residency to receive benefits, it does not help the Division. The document was apparently given to Mr. W. in April of 2008.<sup>20</sup> This was well after his 2008 PFD application was completed.

Mr. W. also apparently applied for Colorado's energy assistance program, LEAP. The record does not establish when he applied. Exhibit 9, page 8 is a page from the LEAP instructions. There is no evidence that Mr. W. actually received these instructions. In addition, the instructions refer to an affidavit located on page 5 of the instructions. This application, including the affidavit, does not contain an assertion of Colorado residency.<sup>21</sup>

Assuming without deciding that Mr. W. should have been a Colorado resident in order to receive financial assistance, he has met his burden of proving that he did not actually make any assertion of residency, at least in regard to his 2008 PFD application. Since he did not make a claim of Colorado residency, he is not ineligible to receive benefits.

Finally, Mr. W. did receive a Colorado Driver License.<sup>22</sup> This license was obtained in July of 2008, which is well after Mr. W.'s 2008 application. The record does not have any indication that Mr. W. made a claim of residency in order to receive this license.

### **C. Assessment**

It is within the division's discretion to require repayment of an erroneously paid PFD.<sup>23</sup> The Department of Revenue is not required to seek repayment, however, and in previous cases, surrounding circumstances have been considered before deciding whether to seek repayment. Because Mr. W. was eligible to receive the 2008 PFD, there is no need to decide how this discretion should be exercised in this case.

## **IV. CONCLUSION**

This case only involves Mr. W.'s 2008 PFD application. Mr. W. maintained his Alaska residency through the date of his 2008 application. During that same time, he did nothing that

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<sup>20</sup> Exhibit 9, page 4. The handwritten note on the bottom states that a packet of information was given to Mr. W. in April of 2008 during a redetermination of benefits.

<sup>21</sup> <http://www.cdhs.state.co.us/leap/PDFs/leap%20basic%20app-2008.pdf>

<sup>22</sup> Exhibit 9, page 2.

disqualified him from receiving a PFD. He did not establish a principal home in Colorado and he did not make an affirmative claim of Colorado residency. Accordingly, he was eligible to receive the 2008 PFD and he does not have to repay that amount to the Division.

DATED this 27<sup>th</sup> day of January, 2010.

By: Signed  
Jeffrey A. Friedman  
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 16th day of March, 2010.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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