

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

In the Matter of:)	
)	
C. F. S.)	
)	OAH No. 09-0689-PFD
<u>2009 Permanent Fund Dividend</u>)	Agency No. 2009-045-6699

DECISION

I. Introduction

C. S. applied for the 2009 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied her application because she was not in Alaska and did not have the required intent to return and remain in Alaska indefinitely. Ms. S. filed an informal appeal which was denied. She has now requested a formal appeal of the Division’s decision. Pursuant to her request, the formal appeal was heard by written correspondence only. Ms. S.’s appeal is denied because she is no longer a resident of Alaska.

II. Facts

2008 is the qualifying year for the 2009 PFD. Ms. S. lived in Alaska for 40 years.¹ She left the state on December 3, 2008 and indicated that the reason for her absence was to determine whether to return to Juneau.² On the Adult Supplemental Schedule, Ms. S. drew a line through the blocks for entering a date to return to Alaska and answered NO to the question, are you returning to Alaska to remain indefinitely.³ At the informal appeal level, Ms. S. stated: “I do not know now if I will be gone indefinitely.”⁴

Ms. S. does own her principal home in Juneau.⁵ Ms. S. maintains bank accounts in Juneau, and her car is registered in Alaska.⁶ She has not taken any steps to establish residency in any other state.⁷

¹ Exhibit 1, page 2.
² Exhibit 1, page 2.
³ Exhibit 1, page 3.
⁴ Exhibit 4, page 2.
⁵ Exhibit 1, page 3; Exhibit 4, page 2.
⁶ Exhibit 6, page 2.
⁷ Exhibit 1, page 4.

III. Discussion

Ms. S. has been a long time Alaska resident. On appeal, she points out that she has lived in Alaska for 40 years, and that she was only absent for 35 days during 2008.⁸ There is no question that she was not absent from the state for more days than are permitted for eligibility. There are, however, other factors that apply to determine whether someone is eligible to receive a PFD.

One of the most basic eligibility requirements is that of being an Alaska resident. To be eligible, one must be a resident during the entire qualifying year as well as on the date of application.⁹ If one is not a resident, he or she is not eligible to receive a PFD regardless of how long the applicant was present in Alaska during the qualifying year.

Whether one is a state resident depends largely on intent.

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

* * *

(c) 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.¹⁰

Intent is subjective, and can be a particularly difficult issue for applicants who candidly acknowledge life's uncertainties. On the other hand, this statute does not require *certainty*; it only requires that one *intend* to remain in Alaska indefinitely.

There is no dispute that Ms. S. established residency under AS 01.10.055(a). There is also no suggestion that she has claimed residency in any other state, territory, or country. The only question for this appeal is whether the circumstances of Ms. S.'s absence are inconsistent with having the intent to remain in Alaska indefinitely.

In this appeal, Ms. S. has the burden of demonstrating that the Division's denial of her application was incorrect.¹¹ Ms. S. left Alaska on December 3, 2008, and as of the date of her application was trying to decide whether to return to Juneau.¹² Her own statements are that she

⁸ Exhibit 4, page 2.

⁹ Alaska Statute AS 43.23.005(a)(2) & (3).

¹⁰ AS 01.10.055

¹¹ Alaska Regulation 15 AAC 05.030(h).

¹² Exhibit 1, page 2.

has not formed the intent to return to and remain in Alaska indefinitely. Given those statements, the circumstances of her absence are in fact inconsistent with having the intent to remain in Alaska indefinitely. It was reasonable for the Division to conclude that Ms. S. did not have the intent to remain in Alaska, and Ms. S. has not met her burden of demonstrating that the Division's denial of her application was incorrect.

IV. Conclusion

As of the date of her PFD application, Ms. S. was not a resident of Alaska as defined by state law. Accordingly, the Division's decision to deny her 2009 PFD application is affirmed.

DATED this 9th day of February, 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 8th day of March, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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