

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

IN THE MATTER OF	)	
	)	
A. L. and her child	)	
B. L.	)	
	)	Case No. OAH 10-0002-PFD
<u>2009 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

A. L. timely applied for 2009 permanent fund dividends for herself and for her child B. L. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Ms. L. requested a formal hearing by written correspondence only.

Review of the entire record does not support a finding that Ms. L. has met her burden of proving that the division’s decision was in error.

**II. Facts**

There are only three sources of factual information in this case: what Ms. L. wrote on her 2009 PFD online application form, what she wrote on her handwritten informal appeal request form, and what she wrote on her formal hearing request.

On her application, Ms. L. checked boxes indicating that she was not in Alaska at the time and that she had been absent 90 days in the qualifying year, but not 180 days. She checked an absence code stating that her absence reason was to accompany an eligible resident, and in the space for an explanation she wrote, “MILITARY TRANSFER.” Ms. L. stated that her absence began on October 10, 2008, but she left the space for a return date blank. On her supplemental schedule Ms. L. indicated that she was married and that her spouse was not filing an application for a 2009 dividend. In the space for explaining why her spouse was not filing, Ms. L. wrote, “NEVER BECAME AN ALASKA RESIDENT.” Ms. L. stated that her principal home was at an address she provided in M. H., Idaho, where she was leasing or renting a home. In answer to a question asking whether she intended to return to Alaska to remain indefinitely, Ms. L. checked a box to answer “no.”

After her application was denied, Ms. L. wrote on her informal appeal request that “I do plan to return to Alaska once my husband retires. My apologies as I overlooked this question.” Ms. L. further wrote that

My husband N. T. L. was eligible for the 2009 dividend because he lived in Alaska for four years just never filed for them. I also forever plan to stay an Alaskan resident indefinitely it is my home where all my wonderful memories are. I’ proud to be an Alaskan resident and that’ll never change. I wanted to stay in Alaska, but I married a military man. I don’t see why one gets punished and not receive a dividend because she got married and moved by the government. Please reconsider me.

In her formal hearing request, Ms. L. reiterated that “I do plan to return to AK indefinitely,” but she did not say when she might be returning to the state. Ms. L. wrote that

The new Spouse Act claims that I may keep my residence of choice when being accompanied by a military member. All the same rules apply. So never was I a resident of Idaho nor do I reside there. My permanent home as well as my son’s is Alaska. Therefore I meet the requirements of “state resident” of Alaska an am eligible for the PFD as well as B. since I am his eligible sponsor. (*sic*)

### **III. Discussion**

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident all through the qualifying year and at the date of application.<sup>1</sup> A person who leaves Alaska remains an Alaska resident so long as the person maintains the intent to return to Alaska to remain indefinitely and to make a home.<sup>2</sup> The burden of proof rests on an individual claiming an allowable absence to prove that the person has maintained, at all times during the absence, the intent to return to Alaska to remain indefinitely and make a home.<sup>3</sup>

The only evidence of Ms. L.’s intent in this case is one statement on her application saying she did not intend to return to Alaska, and another statement made later (after being informed that her eligibility hinges on the matter) saying that she does intend to return someday at an unspecified time after her husband retires. Neither of these statements was made under oath, and Ms. L. has not made herself available to testify and answer questions regarding her intent. Ms. L.’s absence of less than 180 days in the qualifying year might be allowable, but under these circumstances Ms. L. has not met her burden of proving that during her absence she intended to return to Alaska to remain indefinitely and make her home.

Ms. L.’s last written statement refers to a new “Spouse Act” that affects her residency. This appears to be a federal rule regarding military personnel and their dependents. Residency for

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<sup>1</sup> AS 05.030(a)(2)-(3)

<sup>2</sup> AS 01.10.055(c).

purposes of permanent fund dividends is determined by the applicable Alaska laws. Federal laws regarding residency for purposes of the military or other federal considerations are not determinative.

**IV. Conclusion**

Ms. L. has not met her burden of proving that she and B. remained Alaska residents while they were absent from the state. The division’s decision to deny the applications of A. L. and B. L. is AFFIRMED.

DATED this 26<sup>th</sup> 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 26<sup>th</sup> 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.]