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

IN THE MATTER OF	)	
	)	
S. & P. R.	)	
and their child M. R.	)	
	)	Case No. OAH 10-0022-PFD
2009 Permanent Fund Dividend	)	

DECISION

I. Introduction

S. and P. R. timely applied for 2009 permanent fund dividends for themselves and on behalf of their minor child M. 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. The R.s requested a formal hearing by written correspondence only.

Review of the entire file supports the conclusion that the division was correctly applying the law to the facts of this case when it made the decision to deny the applications.

II. Facts

Mr. R. serves in the army. In 1997 the R.s moved to Alaska when Mr. R. was assigned to Fort Richardson. The R.s received their first dividends in 1999. They did not apply in 2000, but did receive 2001 dividends. The R.s did not apply for further dividends until they applied for the 2009 dividends that are the subject of this appeal.

Pursuant to Mr. R.'s military orders, the R.s left Alaska on July 23, 1999. Since leaving Alaska in 1999, the R.s have only been back to the state once, for a seven-day visit from July 5, 2008, until July 12, 2008. They have maintained their Alaska driver's licenses, and Mr. R. has kept Alaska as his state of legal residence in his military employment records. Mr. and Ms. R. have also remained registered to vote in Alaska. Mr. R. has asked to be reassigned to Fort Richardson but has not been able secure an assignment in the state.

Mr. R. detailed his activities in great deal during the period of his absence, but he did not identify specific unavoidable circumstances that prevented the applicants from returning to Alaska, other the hectic pace of a service member and student: "On behalf of my absence there was no feasible way with the continuous moving, continued education, towards promotion and assignments within my military career that could travel with my family back and forth to Alaska and times stated above."[1] Ms. R. and M. have not identified any reasons they could not return to visit Alaska during the nine-year absence. Mr. R. stated that "I and my family purposely intended to remain Alaska

[1] Exhibit 7, page 7.

resident[s] and do believe we have acted with the highest amount of honesty, transparency, integrity and have met all residency and allowable absences as mandated by Alaska permanent fund…." The applicants did not state, however, when they will be returning to Alaska.

III. Discussion

A person who has been allowably absent for more than five years is, by law, presumably not an Alaska resident anymore.[2] If an applicant attempts to overcome this presumption, the Division may rely on the following factors when making a decision[3]:

> (1) the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence;
>
> (2) the frequency and duration of return trips to Alaska during the absence; the fact that the individual has returned to Alaska in order to meet the physical presence requirement of AS 43.23.005 (a)(4) is not sufficient in itself to rebut the presumption of ineligibility;
>
> (3) whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska;
>
> (4) any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's licenses, or receipt of benefits under a claim of residency in another state;
>
> (5) the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel;
>
> (6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska; and
>
> (7) any ties the individual has maintained in Alaska, such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent.

When considering these factors, the Division must "give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not."[4] In considering what constitutes "frequent" return trips, thirty days in five years serves as a kind of guideline. Unless unavoidable circumstances have prevented return trips, the division must "generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not

[2] 15 AAC 23.163(f).
[3] 15 AAC 23.163(g).
[4] 15 AAC 23.163(h)(1).

rebutted the presumption" that he is no longer an Alaska resident.[5] The final rules governing this case are that persons claiming allowable absences have the burden of proving that they intend to return to Alaska,[6] and that persons requesting formal hearings have the burden of proving that the Division's decision was in error.[7]

The applicants have not returned to Alaska for more than thirty days in the most recent five-year period. In fact, they have only returned to Alaska for seven days in a nine-year period. While Mr. R. may have a full schedule, the applicants have not demonstrated that unavoidable circumstances prevented them from returning to Alaska more often. The division must therefore generally consider that the applicants have not rebutted the presumption that they are no longer Alaska residents.

In considering the seven factors above, none are particularly favorable to the applicants, except that they maintained some paper ties to the state and that Mr. R. apparently listed Alaska as his first choice for assignment. Weighing particularly heavy against the applicants are that they only lived in Alaska for a period of less than two years, and they have been absent from the state for nearly a decade without identifying when they will be returning to the state.

The R.s may be Alaska residents for purposes of the military, state taxes, and voting, but for purposes of permanent fund dividend eligibility they have not rebutted the presumption that they are no longer Alaska residents.

IV. Conclusion

The R.s are presumed by law to no longer be Alaska residents for purposes of permanent fund dividend eligibility, and they have not met their burden of rebutting the presumption. Because the division was correctly applying the law, the division's decision to deny the applications of S., P. and M. R. for 2009 permanent fund dividends is AFFIRMED.

DATED this 3rd day of March, 2010.

By: *Signed*
DALE WHITNEY
Administrative Law Judge

[5] 15 AAC 23.163(h)(2).
[6] 15 AAC 23.173(i).
[7] 15 AAC 05.030(h).

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 2nd day of April , 2010.

By: *Signed*
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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