

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

In the Matter of:)	
)	
L. M.)	
)	OAH No. 10-0065-PFD
<u>2009 Permanent Fund Dividend</u>)	Agency No. 2009-050-2868

DECISION

I. Introduction

L. M. applied for a 2009 Permanent Fund Dividend (PFD) for herself and for her four children. The Permanent Fund Dividend Division (Division) denied these applications. She completed the informal appeal process and has now requested a formal appeal for herself and her children.

A hearing was held on March 15, 2010. Ms. M. testified by phone. The Division was represented by Mr. Peter Scott who also appeared by phone. Because Ms. M. did not establish a principal home in another state during the 2008 qualifying year and because she took no other action inconsistent with the intent to remain an Alaska resident, she and her children are eligible for the 2009 PFD.

II. Facts¹

Ms. M. is a long time Alaska resident. Her husband, J. M. was stationed in Alaska. According to Ms. M., her husband did not apply for PFDs because he was frequently deployed overseas and did not think he was eligible to apply. In 2008, Mr. M.'s duty assignment was changed to M. H. AFB in Idaho, effective no later than January 30, 2009.² Mr. M. was scheduled to be deployed to Afghanistan from Idaho.³ It was the family's intent to stay in Idaho until they received their 2009 PFDs, at which point they would use that money to return to Alaska while Mr. M. was overseas.

The family left Alaska on December 8, 2008 to travel to Idaho. The military paid to transport their household goods. They moved into military housing in January of 2009, and have

¹ The factual findings are based on Ms. M.'s testimony except where otherwise noted.

² Exhibit 6, page 4.

³ Exhibit 3, page 4.

lived in military housing, in Idaho, since that date. The children have attended school in Idaho since the family's arrival.

Ms. M. owns a minivan that is registered in Alaska. This vehicle is stored at her mother's home in Alaska. Ms. M. also has an Alaska Driver License. The family expects to be assigned to Elmendorf AFB in Alaska and they hope to retire here after that assignment.⁴

III. Discussion

The Division correctly states:

At the Formal Hearing level the appeal of L. M.'s 2009 PFD turns on a very narrow eligibility question regarding where she maintained her principal home for part of the qualifying year of 2008 and through the date of application.⁵

Before reaching that issue, however, it is useful to address why Ms. M. is not eligible as the spouse of an active duty member of the armed forces.

Alaska statutes and regulations list the requirements to be eligible for a PFD. One requirement is that an applicant be physically present in Alaska during the entire qualifying year or, if absent, be on an allowable absence.⁶ Recognizing the importance of military service and the unique requirements of that service, the legislature has created a broad allowable absence for military families. Ms. M. would remain eligible to receive a PFD while absent from Alaska while

- (3) serving on active duty as a member of the armed forces of the United States or accompanying , as that individual's spouse, minor dependent, or disabled dependent, an individual who is
 - (A) serving on active duty as a member of the armed forces of the United States; and
 - (B) eligible for a current year dividend.⁷

Ms. M. cannot claim this allowable absence because her husband is not eligible. Her husband is not eligible because he did not apply for a PFD. While the record in this case may not contain all the relevant facts concerning Mr. M.'s eligibility, it is undisputed that he did not apply for a 2009 PFD. One who does not apply for a PFD is not eligible.⁸ Because her husband did not apply, Ms. M. is not accompanying an active duty member of the armed forces who is "eligible for a current year dividend."

⁴ Exhibit 8, page 3.

⁵ Formal Hearing Position Statement, page 3.

⁶ Alaska Statute AS 43.23.005(a)(6).

⁷ AS 43.23.008(a)(3).

Alaska law also contains a catch-all provision that allows absences for up to 180 days for any reason as long as the absence is not inconsistent with the intent to remain an Alaska resident.⁹ During the relevant qualifying year, Ms. M. was only absent from Alaska from December 8 through December 31. Because this is less than 180 days, her absence is allowable as long as she did nothing that would make her ineligible.

The Division argues that Ms. M. has acted inconsistently with the intent to remain an Alaska resident by establishing a permanent home in Idaho. A person is not eligible to receive a PFD if at any time during the qualifying year and through the date of application, the applicant has

- (1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed
 - (A) in AS 43.23.008(a)(1) – (3), (9) – (11), or (16); or
 - (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph.¹⁰

Because Ms. M.'s husband did not apply for a PFD, she does not qualify for any of the exceptions to this regulation. Thus, Ms. M. would not be eligible to receive a PFD if she maintained a principal home in Idaho for even one day during the applicable time period.¹¹

Resolution of this dispute depends on Ms. M.'s actions starting when she left Alaska in December of 2008 through January 4, 2009, the date her application was filed.¹²

The division notes that the family's household goods were moved to Idaho and the children attend school there.¹³ The family has lived in military housing in Idaho since January of 2009. Ms. M. notes that she has maintained other ties to Alaska and that the family intends to move back to Alaska for Mr. M.'s next duty assignment and that they intend to retire in Alaska.

⁸ AS 43.23.005(a)(1).

⁹ AS 43.23.008(a)(17). The precise number of days a person may claim under this provision varies based on what other allowable absences he or she may be claiming. In this case, the 180 day provision under AS 43.23.008(a)(17)(A) is applicable.

¹⁰ Alaska Regulation 15 AAC 23.143(d).

¹¹ This does not necessarily mean she would not be an Alaska resident. There is a difference between acts that sever ones residency and acts that merely make one ineligible to receive a PFD. *See, In The Matter Of M.E.*, OAH # 09-0284-PFD.

¹² 15 AAC 23.993(b).

¹³ Moving household goods into a state may not be sufficient to establish residency in that state where the employer has a contract to move the goods out of that state at the end of employment. *See* 15 AAC 23.173(g)(1). Most military employers do move household goods out of state at the end of employment.

Ms. M. could not remember precisely when they moved into military housing. She was, however, credible in describing the family's intent regarding that housing. At least until their PFD applications were denied, the family considered this to be a temporary housing situation. Ms. M. intended to use the 2009 PFD money to return to Alaska. That the children attended school in Idaho and the fact that the household goods were moved to Idaho is not inconsistent with this finding. It is not uncommon for children of military families to attend school in more than one state during a school year, and while having the military move one's household goods is evidence of the intent to maintain a principal home in Idaho, it is not sufficient to outweigh the other evidence in this case. Ms. M. did not maintain a principal home in Idaho at any time prior to January 5, 2009.

A different result might be required if all applicants were required to have a principal home somewhere. In a prior decision, however, the Commissioner of Revenue reversed a hearing officer's determination and held that "[n]ot everyone has a primary home at all times."¹⁴ This decision went on to say

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.¹⁵

Ms. M. was allowably absent for 23 days during 2008. Nothing about her living situation through the date of her application demonstrated that she lacked the requisite intent for Alaska residency. Accordingly, she remained eligible to receive a 2009 PFD.

This decision does not make any ruling as to whether Ms. M. maintained a principal residence in Idaho after her 2009 application was complete, nor is it intended to suggest whether she will be eligible for a 2010 PFD.

IV. Conclusion

L. M. did not maintain a permanent residence outside the state of Alaska. Accordingly, the Division's decision denying her application is reversed. Because Ms. M. is eligible for a

¹⁴ *In the Matter of J.*, Caseload No. 990017 (Dept of Revenue, January 2000), quoted in *In the Matter of K.A.C.*, OAH No. 09-0367-PFD.

¹⁵ *In the Matter of J.*, Caseload No. 990017 (Dept of Revenue, January 2000).

2009 PFD, her children now have an eligible sponsor and they are also eligible to receive a 2009 PFD.

DATED this 19th day of March, 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 April, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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