

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

In the Matter of :)	
)	
L. C.)	
)	OAH No. 10-0164-PFD
<u>2009 Alaska Permanent Fund dividend</u>)	DOR No. 2009-062-2770

CORRECTED DECISION¹

I. Introduction

L. C. filed a timely application for a 2009 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application on the grounds that she did not take one step to establish residence in the state (beyond physical presence) prior to January 1, 2008, she was not a resident of the state throughout the qualifying year, and she had not severed her out-of-state “residential ties” while living in Alaska.² Ms. C. filed a timely appeal which was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on May 11, 2010. Ms. C. testified, and Peter Scott represented the division.

Because Ms. C. did not prove by a preponderance of the evidence that she was a resident of Alaska throughout the qualifying year, the division’s decision is sustained.

II. Facts

In 2007, L. C. was a resident of Oklahoma, living in a mobile home she owned (with her son) in Tulsa. In July of that year, she met a resident of Alaska, K. R., while he was in Tulsa on a business trip. The two hit it off, and after he returned to Alaska they remained in telephone contact; he visited her once in Oklahoma, and she visited him at his home in Wasilla.

In November, 2007, Mr. R. induced Ms. C. to travel to Alaska to live with him, and the couple made plans to marry in June of 2008. Ms. C. rented her mobile home to her son, and on December 13, 2007, she flew up to Alaska and moved in with Mr. R. Ms. C. left her mobile home furnishings intact, but brought her clothes and other personal belongings with her.

While living in Alaska, Ms. C. maintained her Oklahoma vehicle registration and driver’s license. She obtained an Alaska sport fishing license, but did not acquire an Alaska driver’s

¹ The spelling of Mr. R.’s name has been corrected, and two references to “Ms. B.” have been corrected to refer to Ms. C. See 2 AAC 64.250(a).

² Ex. 5, p. 1.

license, did not register to vote in Alaska, did not register her vehicle in the state, or otherwise establish any customary legal ties to the state.³ The planned wedding date passed without a marriage, and the couple set no new wedding date. At the end of 2008, Ms. C.'s son came up to Alaska and stayed with Ms. C. and Mr. R. Ms. C. and her son looked for work, but on June 6, 2009, her son's father died; immediately thereafter, on June 9, 2009, Ms. C. and her son returned to Oklahoma. Ms. C. has remained in Oklahoma since then, and she has no specific plan to return to Alaska.

III. Discussion

In order to be eligible for an Alaska Permanent Fund dividend, an individual must establish residency in Alaska prior to January 1 of the qualifying year and remain a resident throughout the qualifying year.⁴ On appeal, the division contends that Ms. C. is ineligible for the 2008 dividend because she did not establish residency prior to January 1, 2008, the qualifying year for the 2008 dividend and did not maintain the intent to remain in Alaska indefinitely throughout the qualifying year.

AS 01.10.055 establishes the statutory test for establishing residency in Alaska for purposes of the Alaska Permanent Fund dividend program.⁵ AS 01.10.055(a) states:

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.

15 AAC 23.143(a) states:

An individual's intent to establish residency,[or] remain indefinitely in Alaska, ...is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. ...

Ms. C. was a resident of Oklahoma when she came up to Alaska to live with Mr. R. in 2007. Her intent to remain in Alaska was, at that time, contingent on her relationship with him. The couple planned on marrying in June, 2008, but that date passed without any new date being set. Ms. C., throughout her time in Alaska, retained all of the ties to Oklahoma that pre-existed her arrival in Alaska (*e.g.*, driver's license, ownership of residential property); she did nothing to sever those ties or to establish ties to Alaska other than obtaining a fishing license (*e.g.*, registering to vote, entering into a long-term lease; obtaining employment).

³ Ex. 2, p. 1.

⁴ AS 43.23.005(a)(2).

⁵ See AS 43.23.095(7).

Ms. C. has presented no evidence that she severed her pre-existing legal ties to Oklahoma or that she established any substantial ties to Alaska. The preponderance of the evidence is that when she arrived in Alaska, Ms. C.'s intent to remain was contingent on the continuance of a relationship with Mr. R. Ms. C. has not shown by a preponderance of the evidence that she maintained an intent to remain in Alaska indefinitely, without regard to the continuance of a relationship with Mr. R., throughout the qualifying year.

IV. Conclusion

L. C. did not prove by a preponderance of the evidence that she established Alaska residency prior to January 1, 2008, and that she maintained the intent to remain in Alaska indefinitely throughout the qualifying year. Because she did not, she has not shown that the division's decision was erroneous. The division's decision to deny his application is therefore sustained.

DATED July 6, 2010.

Signed

Andrew M. Hemenway
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 July, 2010.

By: Signed

Signature
Jerry Burnett

Name
Deputy Commissioner

Title

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