

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

In the Matter of:)	
)	
W. T. L.)	
)	OAH No. 10-0176-PFD
<u>2009 Permanent Fund Dividend</u>)	Agency No. 2009-052-8506

DECISION

I. INTRODUCTION

W. L. submitted an application for a 2009 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (Division) initially denied his application for not having provided requested information.² More information was provided at the informal appeal level, after which the Division again denied Mr. L.'s application; this time because he had not established his residency in Alaska at least 180 days before departing Alaska for more than 180 days.³

Mr. L. has appealed the Division's decision. A hearing by written correspondence was held before the Office of Administrative Hearings. As discussed below, the Division's decision denying Mr. L.'s application is upheld.

II. FACTS

Mr. L. first arrived in Alaska on April 1, 2006.⁴ He remained in Alaska until September 30, 2006.⁵ The record does not disclose when Mr. L. returned to Alaska, but he was also absent from Alaska from January 1 through April 1, 2007.⁶ He did not register a vehicle in Alaska until June of 2008,⁷ and did not register to vote or obtain an Alaska driver's license until July of 2008.⁸ He appears to have stayed in a campground from May 1 through October 1, 2008,⁹ and then resided in a hotel from October 2, 2008, through March of 2009.¹⁰

¹ Exhibit 1, page 1.
² Exhibit 3, page 1.
³ Exhibit 5, page 1.
⁴ Exhibit 1, page 3.
⁵ Exhibit 6, page 2.
⁶ Exhibit 4, page 3.
⁷ Exhibit 1, page 3; Exhibit 8, page 1.
⁸ Exhibit 1, page 3.
⁹ Exhibit 1, page 5.
¹⁰ Exhibit 1, pages 7 – 9.

Department of Labor records show that Mr. L. earned income in Alaska during the second and third quarters of 2006, during the third quarter of 2008, and during the second and third quarters of 2009.¹¹ Mr. L. has been going to school and living on savings during his periods of unemployment.¹²

III. DISCUSSION

A person is eligible for a 2009 PFD if he meets all the eligibility requirements during the 2008 qualifying year and continues to meet those requirements through the date of his application.¹³ One basic eligibility requirement is that the applicant be a state resident during the entire qualifying year.¹⁴

At the informal appeal level, the Division ruled against Mr. L., stating:

You did not meet the definition of “state resident” as it applies to the PFD program for at least 180 days immediately before departing Alaska for more than 180 days absence.^[15]

Whether Mr. L. was a state resident for 180 days before he left Alaska in 2006 is actually not a relevant issue in this case. The 180 day rule applies to determinations of whether an absence is allowable. A person may not claim an allowable absence – other than the 180 day absence for any reason – if he was not a state resident for at least six months before leaving on that absence.¹⁶ A person may still be a state resident while absent for more than 180 days without first having been a resident for 180 days, but the absence would not be an allowable absence for PFD purposes.

Whether Mr. L. was on an allowable absence during 2007 need not be decided in this case. Mr. L. has applied for a 2009 PFD, so the qualifying year at issue here is 2008. During 2008, Mr. L. was only absent from January 1 through April 29, 2008, a period of 119 days.¹⁷ This absence would not make him ineligible for a PFD if he is otherwise eligible.¹⁸ Accordingly, this case hinges on whether Mr. L. established residency during either 2006 or 2007, rather than on precisely how long he was a resident before leaving the state.

The relevant portion of the statute defining state residency says:

¹¹ Exhibit 7.

¹² Exhibit 6, page 3.

¹³ Alaska Statute AS 43.23.005; AS 43.23.095; Alaska Regulation 15 AAC 23.993(a)(7).

¹⁴ AS 43.23.005(a)(3).

¹⁵ Exhibit 5, page 1.

¹⁶ AS 43.23.008(b); 15 AAC 23.163(b).

¹⁷ Exhibit 1, page 2; Exhibit 1, pages 5 – 9.

¹⁸ AS 43.23.008(a)(17).

- (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.
- (b) A person demonstrates the intent required under (a) of this section
 - (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period of a longer period is required by law or regulation; and
 - (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.^[19]

For purposes of determining residency in PFD cases, the Department of Revenue has adopted regulations describing the evidence it requires as “proof of intent.”²⁰ While this list does not specify every type of evidence required to prove intent to remain in Alaska, the list does establish that something more than mere presence in Alaska is required. In addition, 15 AAC 23.143(c) requires at least one step beyond physical presence prior to the qualifying year to establish residence. In this case, Mr. L. must show he took at least one step beyond physical presence prior to January 1, 2008.

Mr. L.’s Adult Supplemental Schedule states that he moved his household goods to Alaska and purchased, leased, or rented a place to live in May of 2006.²¹ The instructions to the Adult Supplemental Schedule require documentation for those statements. Mr. L. did not provide any documentation to support his statement that he moved his household goods and established a place to live in Alaska during 2006. The lack of this supporting information does not prove that Mr. L. *did not* have the required intent to remain in Alaska, but this lack does mean that in the absence of some other evidence, he has not met his burden of proof on this issue.²² Mr. L. also held a job in Alaska for some period of time during 2006, earning about \$3500.²³ There is no evidence in the record as to what type of job this was. It was apparently only short term employment, however. Temporary residents also routinely take short term employment in Alaska, so this work is not sufficient to be a step in addition to physical presence

¹⁹ AS 01.10.055 (emphasis added).

²⁰ 15 AAC 23.173(g).

²¹ Exhibit 1, page 3.

²² Mr. L. has the burden of proving that the Division’s decision was incorrect. 15 AAC 05.030(h).

²³ Exhibit 7.

necessary to establish residency.²⁴ Mr. L. has not met his burden of proving that he had become an Alaska resident during 2006.

Similarly, Mr. L. has not proven that he formed the required intent to remain in Alaska during 2007. He states that he was out of state from January 1, 2007 through April 1, 2007.²⁵ Mr. L. stated in his informal appeal that he has not left the state for any reason since March of 2007.²⁶ On his application, however, he states that he was out of Alaska from January 1 through April 29, 2008.²⁷ There is no documentation confirming Mr. L.'s statement that he was in Alaska at any time during 2007, much less that he was physically present and had formed the intent to remain indefinitely. This does not mean that Mr. L. was not in Alaska. Instead, he has simply not met his burden of proving that the Division's decision to deny his application was incorrect.

Mr. L. has not proven that he established his Alaska residency prior to January 1, 2008. Thus, he has not shown that he was a resident during the entire qualifying year and is therefore not eligible to receive a 2009 PFD.

Mr. L. did rent living accommodations for himself during 2008.²⁸ He also registered to vote and registered his vehicle.²⁹ These actions may make it possible for him to be eligible to receive a 2010 PFD based on the 2009 qualifying year. Whether he is in fact eligible is not at issue in this appeal, and is not decided by this decision.

IV. CONCLUSION

Mr. L. has not met his burden of proof in this matter. Accordingly, the Division's decision denying Mr. L.'s application is upheld.

Dated this 27th of May, 2010.

Signed

Jeffrey A. Friedman
Administrative Law Judge

²⁴ 15 AAC 23.143(a)
²⁵ Exhibit 4, page 3.
²⁶ Exhibit 4, page 2.
²⁷ Exhibit 1, page 2.
²⁸ Exhibit 1, pages 5, 7 – 9.
²⁹ Exhibits 8 and 9.

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 25th day of June, 2010.

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

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