

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

IN THE MATTER OF)
)
 P M & J M JR.)
) Case No. OAH 10-0354-PFD
2010 Permanent Fund Dividends)

DECISION & ORDER

I. Introduction

J and P M timely applied for 2010 permanent fund dividends. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the application initially and at the informal appeal level. The Ms requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on August 23, 2010. Mr. M appeared by telephone. Pete Scott represented the PFD Division by telephone. The administrative law judge finds the applicants not to be eligible for a 2010 dividend.

II. Facts

The M family first moved to Alaska in 1998. They lived in Alaska for three years before they left. J and P M did not receive the 2004 PFD because they had not been present in Alaska for 72 consecutive hours in during the two prior years. Mr. and Ms. M did not apply for 2005-2009 PFDs. They lived outside Alaska for nine years before they moved back to Alaska on July 31, 2009, which is more than half way through the 2010 PFD qualifying period.

Before their nine year absence, the Ms established some residency ties to Alaska. The Ms registered to vote in Alaska, obtained drivers' licenses, and registered their vehicles in Alaska. Alaska was listed as the state of legal residence in Mr. M's employment records. The Ms maintained some of these ties during the nine years that they lived outside Alaska, but they also established some residency ties to other state. For example, Ms. M's employment records showed other states as her legal residence during their absences, and both J and P M obtain drivers' licenses in the State of Arizona.

Mr. M was under orders from the military during their nine year absence. The Ms did not return to Alaska at all during their nine year absence. They did not return until they moved back in 2009 for another military posting. At the hearing, Mr. M explained that he was appealing the Division's denial of their 2010 PFD application because he understood the Division's denial to mean that they had not maintained their intent to return to Alaska, which he disagreed with. Mr. M

explained that in addition to being stationed in Germany he was deployed twice, and when he did have leave he and Ms. M had to deal with the deaths of parents. In his request for a formal hearing Mr. M explained that they plan to retire in Alaska, but admit that they moved their remaining household goods from Alaska during their absence in 2007.

III. Discussion

A person who has been allowably absent for more than five years is, by law, presumably not an Alaska resident anymore.¹ If an applicant attempts to overcome this presumption, the Division may rely on the following factors when making a decision²:

- (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.”³ 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

¹ 15 AAC 23.163(f).

² 15 AAC 23.163(g).

rebutted the presumption” that he is no longer an Alaska resident.⁴ The final rule governing this case is that a person requesting a formal hearing has the burden of proving that the Division’s decision was in error.⁵

While Mr. M believes that from his point of view they should qualify because they wanted to return and eventually did return to Alaska, the Division correctly analyzed the law in this case and applied the above factors, giving particular weight to the fact that the Ms had not been back to Alaska for more than thirty days in the five years prior to their applications. Under these circumstances, the Division’s decision was consistent with the regulatory directive that it “generally consider” someone in the Ms’ situation to no longer be an Alaska resident.

The Division determined that the Ms failed to show that during their absence they at all times maintained the intent to return to Alaska to make their home. In making this determination, the fact that the Ms did actually move back to Alaska does not mean that they consistently maintained their intent to return at all times during the nine years that they were living outside Alaska. They did not return to Alaska for thirty days in the five-year period before their return. They did not return to visit Alaska at all during their absence. While they maintained some paper ties to Alaska, it appears that they may have established some ties of residency to Arizona toward the end of their extended absence. Applying the presumptions regarding their intent, the Ms failed to provide persuasive evidence that during their nine year absence their intent to move back to Alaska did not waiver or change.

The regulation creating the measure of thirty days in five years provides a kind of yardstick for measuring the likelihood that a person consistently maintains intent to move back to Alaska during an extended absence. While it does not create not an absolute rule that those who do not return for at least thirty days in the past five years are not eligible, it is a rare case when an applicant will be able to present persuasive evidence of intent to return to Alaska that will overcome this presumption. The 30-day rule helpfully provides a test for measuring a person’s probable subjective intent in the context of their maintenance of Alaska residency during an extended absence.

IV. Conclusion

Considering all the evidence in this case, I find that Mr. and Ms. M have not rebutted the presumption that they failed to maintain the intent to return to Alaska to remain indefinitely and

³ 15 AAC 23.163(h)(1).

⁴ 15 AAC 23.163(h)(2).

make their home at all times when they were living outside the state. The Ms did not become Alaska residents again in time to be eligible for 2010 dividends.

V. Order

IT IS HEREBY ORDERED that the applications of J and P M for 2010 permanent fund dividends be DENIED.

DATED this 8th day of October, 2010.

By: Signed
Mark T. Handley
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 9th day of November, 2010.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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