

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

In the Matter of:)
)
A. M. J.) OAH No. 10-0587-PFD
) Agency No. 2010-001-6634
2010 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

This case is A. M. J.’s appeal of denial of her application for a 2010 Alaska Permanent Fund Dividend (PFD). Ms. J. timely applied for her 2010 PFD. Ms. J.’s application was denied by the Permanent Fund Dividend Division (Division) because she had answered “no” to the question asking whether she intended to return to and remain in Alaska indefinitely. She requested an informal appeal and was again denied. Ms. J. then requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal in a formal hearing on January 3, 2011. Ms. J. appeared by telephone. PFD specialist Bethany Chase represented the Division by telephone. The hearing was audio recorded. The record in this appeal closed at the end of the hearing.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Ms. J. does not qualify for a 2010 dividend, because she was trying to establish Washington state residency for the purpose of qualifying for in-state tuition during her absence from Alaska in 2009.

II. Facts

Ms. J. was born and raised in Alaska.¹ She left Alaska to work, planning attend Washington State University. Ms. J. was absent for less than 180 days during 2009.²

In completing her Adult Supplemental Schedule, Ms. J. answered “no” to question 4B which asks, “are you returning to Alaska to remain indefinitely.” During the appeal process and at the hearing, Ms. J. explained that she was trying to qualify for in-state tuition in Washington, but understood that she would have to be in Washington for a year before she would qualify.³

¹ Exhibit 1, page 6.

² Exhibits 1 & 3.

³ Exhibit 3, page 2 & Recording of Hearing.

Having read some of the materials on the Division's website, Ms. J. believed that she should qualify for a 2010 PFD because she was absent from Alaska less than 180 days in 2009, had not yet qualified for in-state tuition in Washington, and had left some of her personal belongings in Alaska.⁴

Based on the evidence in the record, I find that during 2009, Ms. J. was living in Washington state under circumstances that were inconsistent with the intent to remain a resident of Alaska.⁵

III. Discussion

To qualify for the 2010 PFD, an applicant must meet the eligibility requirements during all of the 2009, the qualifying year for the 2010 PFD, and through the date of application. As applied to Ms. J.'s application, that means she must have been an Alaska resident on January 1, 2010, the date of her application, as well as during all of 2009.⁶ To be an Alaska resident, one must not claim residency in the other state, or be absent under circumstance that are inconsistent with the intent required to remain a resident of Alaska during an absence.⁷

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Ms. J., has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁸ Ms. J. did not show by a preponderance of the evidence that she is eligible to receive her 2010 PFD. Ms. J. admitted that she was working on establishing Washington state residency while she was absent from Alaska in 2009.

Ms. J.'s confusion about the PFD eligibility requirements is understandable. It was not Ms. J.'s absence, but the undisputed fact that she was working on establishing Washington residency in order to obtain a benefit of Washington residency during that absence which disqualifies her.

Ms. J. lost her status as an Alaska resident when she decided to begin the process of qualifying for in-state tuition by meeting the one-year residency requirement in Washington. While this may have been a sound financial decision, Alaska law prevents a PFD applicant from qualifying for an Alaska PFD, a benefit of Alaska residency, if the applicant was absent during

⁴ Recording of Hearing.

⁵ Exhibit 3, page 2 & Recording of Hearing.

⁶ Alaska Statute AS 43.23.005(a).

⁷ AS 01.10.055(c).

⁸ Alaska Regulation 15 AAC 05.030(h).

the PFD qualifying period under circumstances that are inconsistent with the intent to remain an Alaska resident.⁹

In 2009 Ms. J. was living in Washington after establishing Washington as her state of domicile in order complete the one year residency period required to qualify to pay in-state tuition, a benefit of residency in Washington. The circumstances of this absence were inconsistent with the intent required to maintain Alaska residency because Ms. J. was required to be living in Washington without the intent to move back to Alaska in order for the one-year Washington residency requirement to start to run.¹⁰

IV. Conclusion

Ms. J. failed to show by a preponderance of the evidence that she maintained her Alaska residency during her absence from Alaska in 2009. The Division's decision is upheld. Ms. J. is not eligible to receive the 2010 PFD.

DATED this 7th day of January, 2011.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

⁹ Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

¹⁰ For the requirements of establishing Washington residency for the purpose of qualifying for in-state tuition see RCW 28B.15.011-015 & WAC 250-18-06-010.

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 February, 2011.

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

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