

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

In the Matter of:)	
)	
C E. S)	OAH No. 10-0628-PFD
)	Agency No. 2010-053-0761
<u>2010 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

This case is C E. S’s appeal of denial of her application for a 2010 Alaska Permanent Fund Dividend (PFD). Ms. S timely applied for her 2010 PFD. Ms. S’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. S then requested a formal hearing by correspondence.

Administrative Law Judge Mark T. Handley heard the appeal. PFD specialist Bethany Chase represented the Division and filed a position paper. Ms. S did not file a response to the Division’s position paper. The record in this appeal closed on February 1, 2011.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Ms. S does not qualify for a 2010 dividend, because she moved from Alaska under circumstances that were inconsistent with the intent to maintain Alaska residency in 2009. Ms. S therefore lost her Alaska residency and did not reestablish her Alaska residency in time to qualify for a 2010 PFD.

II. Facts

Ms. S was a resident of Alaska who qualified for the 2009 PFD.¹ Ms. S was absent from Alaska for less than 180 days during 2009. She left Alaska to work in Hawaii on November 13, 2009. In her request for an informal appeal, Ms. S explained: “I moved to Hawaii for employment however it didn’t work out.” Ms. S moved back to Alaska on May 31, 2010.²

In completing her Adult Supplemental Schedule on March 24, 2010, Ms. S answered “no” to question 4B which asks, “are you returning to Alaska to remain indefinitely.”³ Ms. S indicated on her 2010 PFD application that after she moved from Alaska, she had maintained

¹ Exhibit 1.
² Exhibit 3.
³ Exhibit 1.

her principle home in Hawaii, had claimed Hawaii as her state of legal residence on her employment records, and had claimed in a court proceeding that she was a resident of Hawaii.⁴

In her request for an administrative review and a formal hearing, Ms. S wrote that she believed that she should qualify for a 2010 PFD because she had returned to Alaska and had been present in Alaska in 2009 for enough time to qualify.⁵

Based on the evidence in the record, I find that during 2009, Ms. S was living in Hawaii under circumstances that were inconsistent with the intent to remain a resident of Alaska.⁶

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. S's application, that means she must have been an Alaska resident on March 24, 2010, the date of her application, as well as during all of 2009.⁷ 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.⁸

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Ms. S, has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁹ Ms. S did not show by a preponderance of the evidence that she is eligible to receive her 2010 PFD. Ms. S admitted that she claimed Hawaii state residency while she was absent from Alaska. The evidence in the record shows that Ms. S moved to Hawaii for employment in 2009, and that she claimed and took several steps to establish Hawaii state residency in 2009 and 2010. The fact that her employment situation unexpectedly did not work out after several months, which caused her to decide to move back to Alaska does not mean that she maintained her Alaska residency while she was living in Hawaii.

Ms. S's confusion about the PFD eligibility requirements is understandable. It was not just Ms. S's absence and that she indicated that she would not return to Alaska on her PFD application, but the undisputed facts that she showing that she established Hawaii residency during her absence which disqualify her. Alaska law prevents a PFD applicant from qualifying

⁴ Exhibit 1.
⁵ Exhibit 3 & 5.
⁶ Exhibit 1,3& 5.
⁷ Alaska Statute AS 43.23.005(a).
⁸ AS 01.10.055(c).
⁹ Alaska Regulation 15 AAC 05.030(h).

for an Alaska PFD, a benefit of Alaska residency, if the applicant was absent during the PFD qualifying period under circumstances that are inconsistent with the intent to remain an Alaska resident.¹⁰

In 2009 Ms. S was living in Hawaii and claimed Hawaii as her state of residency for employment and in a court proceeding.¹¹ The circumstances of this absence were inconsistent with the intent required to maintain Alaska residency.

IV. Conclusion

Ms. S 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. S is not eligible to receive the 2010 PFD.

DATED this 7th day of February, 2011.

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 7th day of March, 2011.

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

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

¹⁰ Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

¹¹ Either of these acts, or accepting fulltime permanent employment in Hawaii, or the fact that she maintained her primary home in Hawaii during her absence, would by themselves have disqualified Ms. S even if she had otherwise maintained her Alaska residency. See Alaska Regulation 15 AAC 23.143(d)(1),(2),(4)&(8).