

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

In the Matter of	)	
D. M.	)	
	)	OAH No. 11-0052-PFD
<u>2010 Permanent Fund Dividend</u>	)	Agency No. 2010-018-8430

**DECISION**

**I. Introduction**

D. M. timely applied for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division (division) determined that on the date of application Mr. M. was not a resident of Alaska because he had moved, maintained his principal home in Oregon, and did not intend to return to Alaska to remain indefinitely. The division denied the application initially and at the informal appeal level. Mr. M. requested a formal hearing which was held by telephone on March 14, 2011. The division’s denial of Mr. M.’s application is affirmed because Mr. M. failed to show that he was more likely than not eligible for a 2010 PFD.

**II. Facts**

On January 13, 2010, Mr. M. and his fiancé left Alaska for Oregon. When asked why he left, Mr. M. explained that he moved to help his mother take care of her terminally ill sister. To do this he and his fiancé moved out of their Soldotna apartment, placed their belongings in storage, and moved in with his mother in No Name, Oregon. They left Alaska on January 13, 2010 taking with them what would fit in two boxes.

On January 20, 2010, his fiancé completed and filed Mr. M.’s 2010 PFD application online. One question asks whether the applicant was physically in Alaska at the time of application. Mr. M.’s application answered this question in the affirmative and provides an Alaska physical and mailing address.<sup>1</sup> A routine audit revealed that the application was filed from a computer located in No Name, Oregon so the correct answer would have been “no.” The division’s attempts to contact Mr. M. at the addresses provided on his application (Alaska addresses) were unsuccessful as he had moved to Oregon. Eventually the division contacted Mr. M. by email and he promptly called the PFD office.

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<sup>1</sup> Exh. 1.

Because of the answers provided on his application, Mr. M. was required to update his contact information and complete the 2010 Adult Supplemental Schedule. Rather than have the division send him the supplemental schedule to complete and mail it back, Mr. M. elected to complete the questionnaire over the phone. The division employee would read Mr. M. each question or statement on the application and Mr. M. gave the division employee his answer to mark down.<sup>2</sup>

One question asked if Mr. M. maintained his principal home outside of Alaska and another question asked if he planned to return to Alaska to remain indefinitely.<sup>3</sup> The supplemental schedule shows the “no” answer was selected.<sup>4</sup> The form contains “yes” answers to the questions asking if Mr. M. is married and if his wife filed for a 2010 PFD.<sup>5</sup> Because the answers stated that he maintained his principal home out of Alaska and did not intend to return to remain indefinitely, Mr. M. was claiming he was no longer a resident of Alaska for purposes of the PFD program and for this reason, the division denied Mr. M.’s application.<sup>6</sup>

Mr. M. appealed the denial. He contends the answers were inaccurate. Under the section “relevant facts to be considered” Mr. M. stated that he maintained a residency in Alaska through January 13, 2010, he has not claimed residency in any other state, and he plans to return to work at his father’s roofing company in Alaska when work picks up.<sup>7</sup> He emphasized that his move was temporary to care for an ill family member, he has a rental lease from November 2007 until he left in January 2010, and denied that he was married.

The division did not change its position and this formal appeal followed. In support of his request for a formal appeal Mr. M. repeated his prior arguments and he explained that he no longer had an Alaska mailing address because he failed to pay his mailbox fee. He emphasized that he “was a resident in Alaska from Nov. 2007 til[sic] Jan. 2010” and that he had “done everything an Alaska resident can do.”<sup>8</sup> As proof that the answers on the supplemental form are incorrect, Mr. M. stated that he is not married.

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<sup>2</sup> M. Testimony.

<sup>3</sup> Exh. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Exh. 4.

<sup>7</sup> Exh. 5 at 2; M. Testimony.

<sup>8</sup> Exh. 7; M. Testimony.

At the hearing Mr. M. testified he should receive the dividend because he was present in Alaska throughout 2009, the qualifying year, and that he did not understand the PFD rules required he remain a resident up through the date of the application. He also stated that he had lost his storage unit and belongings when he was unable to pay the storage fee. Finally, Mr. M. recalled speaking with the division representative in October 2010 and being asked certain questions but he did not understand what was being asked. He claimed the division representative did not fully explain the question or that the questions were vague or poorly worded.

Mr. M. is not working. He has no source of income but does receive food stamps. He and his fiancé plan on returning to Alaska when they received their dividends.

### **III. Discussion**

#### **A. Date of Application**

One of the criteria to be eligible to receive a PFD is that a person must be a “state resident on the date of application” and “during the entire qualifying year.”<sup>9</sup> The “date of application” is the date on which the application is timely filed.<sup>10</sup> Therefore the issue to be resolved is whether from January 1, 2009 through January 20, 2010, Mr. M. was a state resident.

#### **B. Residency**

The definition of “state resident” as it applies to the Alaska Permanent Fund Dividend program:

means an individual who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055, or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of AS 01.10.055[.]<sup>11</sup>

AS 01.10.055(a) requires that a person be present with the intent to remain indefinitely and to make a home in the state. This intent is demonstrated by maintaining a principal home in Alaska and other proof of intent as may be required by law or regulation.<sup>12</sup> Once a person establishes residency, the person will remain an Alaska state resident while absent “unless . . .

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<sup>9</sup> AS 43.23.005(a)(2) & (3).

<sup>10</sup> 15 AAC 23.993(b)(2).

<sup>11</sup> AS 43.23.095(7)

<sup>12</sup> AS 01.10.055(b).

the person establishes . . . residency in another state . . . or performs other acts or is absent under circumstances that are inconsistent with the intent . . . to remain a resident of this state.”<sup>13</sup>

The term “establishes residency” is given a definite and precise meaning in AS 01.10.055(a): presence in Alaska with the intent to remain indefinitely and to make a home in the state. Thus, under AS 01.10.055(c), to establish residency in another state, a person must be physically present in that other state with the intent to remain indefinitely. Because Mr. M. is physically present in Oregon with no specific plan to return to Alaska and no definite or determinable date on which he would return, and thereby severed residency in Alaska.

Mr. M. disputes this conclusion. He denies that he established residency in another state. As evidence he states that he has nothing in his name in Oregon, has not looked for work, has not claimed Oregon residency, receives no benefit except food stamps, lives with his mother taking care of a sick relative, and except for the two boxes of belongings he brought with him in January 2010, all of his belongings remain in Alaska. He also contends that his reason to go to Oregon was for a temporary purpose, to help a family member.

Residency is a subjective state of mind most often corroborated through objective acts. Here the objective acts in support of continued Alaska residency are that most of his belongings remained in Alaska either in storage or with his father. When asked why he placed his items in storage if the move was temporary, Mr. M. explained that made better fiscal sense to rent a storage unit then pay rent. It is not uncommon for Alaska residents to leave on extended vacations and it would be logical that a resident would opt to pay storage rates rather than rent for an unoccupied apartment. Nor is it uncommon for a family member to be out of state to assist another family member.<sup>14</sup>

To find Mr. M. has met his burden of proof, because the evidence of intent to return is scant (his items in storage which he no longer has possession of) it is necessary to rely upon Mr. M.’s testimony. Mr. M. was under the impression that all that was required to get the PFD was to be in Alaska from January 1, 2009 to January 1, 2010, which he was.

Finally on his request for a formal hearing when asked what other relevant facts should have been considered by the division he wrote “I have rental leases that verify I was a resident in Alaska from Nov. 2007 til [sic] Jan. 2010.” This statement corresponds to his understanding of

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<sup>13</sup> AS 01.10.055(c).

<sup>14</sup> As a matter of policy the Legislature has provided that caring for a terminally ill family member is an allowable absence. AS 43.23.008(a)(7).

how the PFD requirements worked. It is more likely than not that Mr. M. simply did not understand the rules of the PFD program and believed that when he left he would be eligible for a 2010 PFD. When he realized he misunderstood the rules, he is now trying to back pedal and claim he intends to return. Yet the evidence of his intent to return just isn't there.

After listening to Mr. M., it is more likely than not that on the date of application, January 20, 2010, he was ineligible for a 2010 PFD because he maintained his principal home in Oregon and he no longer had the intent to return to Alaska to remain indefinitely.

#### **IV. Conclusion**

Mr. M. failed to show that he was eligible for the 2010 dividend. Nothing in this decision precludes him from reestablishing his resident status and thus becoming eligible for future PFDs. The decision of the Permanent Fund Dividend Division to deny the application of D. A. M. for a 2010 permanent fund dividend is AFFIRMED.

DATED this 19<sup>th</sup> day of May, 2011.

By: Signed  
Rebecca L. Pauli  
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 17<sup>th</sup> day of June, 2011.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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