

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

In the Matter of:	)	OAH No. 11-0058-PFD
J B	)	Agency No. 2010-012-8745
And her child, J. Y	)	& 2010-012-8809
	)	
<u>2010 Permanent Fund Dividends</u>	)	

**DECISION**

**I. Introduction**

J B applied for a 2010 Permanent Fund Dividend (PFD) for herself and for her child, J Y. The Permanent Fund Dividend Division (Division) denied these applications. Ms. B completed the informal appeal process and has now requested a formal appeal for herself and her child.

A hearing on this appeal was held on March 21, 2011. Ms. B testified by phone. The Division was represented by Mr. Peter Scott who also appeared by phone. Because Ms. B established her principal home in another state during the date of her application for a 2010 PFD, she and her child are not eligible for the 2010 PFD.

**II. Facts<sup>1</sup>**

Ms. B is a long time Alaska resident. Her husband, R B, was stationed in Alaska. According to Ms. B, her husband did not apply for a 2010 PFD, because he did not change his state of legal residence on his employment records to Alaska in time to be eligible. In 2009, Mr. B's duty assignment was changed to Fort Riley in Kansas. Mr. B's reporting date in Kansas was January 10, 2010. The Army paid to move the family's house hold goods to Kansas. Ms. B and her family left Alaska on November 30, 2009, a few days after the movers had packed up their household in Alaska.

After they left Alaska, Ms. B and her family visited her in-laws. They signed a lease for their new home on December 16, 2009, then went back to visit relatives until they moved into their new home in Kansas on January 8, 2010.<sup>2</sup> Their household goods delivered that same day. Ms. B applied for her and her daughter's 2010 PFD applications on January 11, 2010.<sup>3</sup> Ms. B's husband was later deployed. Ms. B moved back to Alaska to live with her parents during her husband's deployment. The family expects to return to live in Kansas in July of 2011, after the

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<sup>1</sup> The factual findings are based on Ms. B's testimony except where otherwise noted.

<sup>2</sup> Recording of hearing- Testimony of Ms. B.

<sup>3</sup> Exhibit 1, page 1.

deployment ends.<sup>4</sup> Ms. B admitted that she had maintained her primary home outside Alaska on the supplemental schedule to her 2010 PFD application that the Division completed for her during a phone conversation.<sup>5</sup>

### III. Discussion

The Division denied Ms. B's application because she maintained her principal home outside Alaska the date of her 2010 PFD application.<sup>6</sup> Before reaching that issue, however, it is important to explain why Ms. B is not eligible as the spouse of an active duty member of the armed forces.

Alaska statutes and regulations list the requirements to be eligible for a PFD. One requirement is that an applicant be physically present in Alaska during the entire qualifying year or, if absent, be on an allowable absence.<sup>7</sup> Recognizing the importance of military service and the unique requirements of that service, the legislature has created a broad allowable absence for military families. Ms. B would not lose her PFD eligibility while absent from Alaska while

- (3) serving on active duty as a member of the armed forces of the United States or accompanying , as that individual's spouse, minor dependent, or disabled dependent, an individual who is
  - (A) serving on active duty as a member of the armed forces of the United States; and
  - (B) eligible for a current year dividend.<sup>8</sup>

Ms. B cannot claim this allowable absence, however, because her husband is not eligible. Her husband is not eligible because he did not apply for a PFD. While the record in this case may not contain all the relevant facts concerning Mr. B's eligibility, it is undisputed that he did not apply for a 2010 PFD. One who does not apply for a PFD is not eligible.<sup>9</sup> Because her husband did not apply, Ms. B is not accompanying an active duty member of the armed forces who is "eligible for a current year dividend."

Alaska law also contains a catch-all provision that allows absences for up to 180 days for any reason as long as the absence is not inconsistent with the intent to remain an Alaska

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<sup>4</sup> Exhibit 8, page 3.  
<sup>5</sup> Exhibit 1, page 4.  
<sup>6</sup> Exhibit 3, page 1.  
<sup>7</sup> Alaska Statute AS 43.23.005(a)(6).  
<sup>8</sup> AS 43.23.008(a)(3).  
<sup>9</sup> AS 43.23.005(a)(1).

resident.<sup>10</sup> During the relevant qualifying year, Ms. B was only absent from Alaska from November 30, 2009 through December 31, 2009. Because this is less than 180 days, her absence is allowable as long as she did nothing that would disqualify her.

The Division argues that Ms. B disqualified because she established her primary home in Kansas. A person is not eligible to receive a PFD if at any time during the qualifying year and through the date of application, the applicant has

- (1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed
  - (A) in AS 43.23.008(a)(1) – (3), (9) – (11), or (16); or
  - (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph.<sup>11</sup>

Because Ms. B's husband did not apply for a PFD, she does not qualify for any of the exceptions to this regulation. Thus, Ms. B would not be eligible to receive a PFD if she maintained her principal home in Kansas for even one day before her 2010 PFD application was complete.<sup>12</sup>

The family's household goods were moved to Kansas.<sup>13</sup> The family lived in Kansas beginning in January of 2010. Ms. B notes that she has maintained other ties to Alaska and that the family intends to move back to Alaska for Mr. B's next duty assignment.

Ms. B's disqualification results from her actions starting in November of 2009 – when she left Alaska – through the date her application was complete. It appears from the record that her application was complete no earlier than January 11, 2010.<sup>14</sup>

This decision does not make any ruling as to whether Ms. B maintained her principal home in Kansas after her 2010 application was denied, nor is it intended to suggest whether she will be eligible for a 2011 PFD.

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<sup>10</sup> AS 43.23.008(a)(17). The precise number of days a person may claim under this provision varies based on what other allowable absences he or she may be claiming. In this case, the 180 day provision under AS 43.23.008(a)(17)(A) is applicable.

<sup>11</sup> Alaska Regulation 15 AAC 23.143(d).

<sup>12</sup> This does not mean she would not be an Alaska resident. There is a difference between acts that sever ones residency and acts that merely make one ineligible to receive a PFD. *See, In The Matter Of M.E.*, OAH # 09-0284-PFD.

<sup>13</sup> This does not mean she became a Kansas resident. An employer or a spouse's employer moving household goods to Alaska for example is not acceptable proof of the intent to remain in Alaska when the employer has a contract to move the goods back at the end of the employment, as in the case of most military employers. *See* 15 AAC 23.173(g)(1).

<sup>14</sup> Exhibit 1, page 1.

#### IV. Conclusion

J B did maintain her principle home outside the state of Alaska before she applied for the 2010 PFD. Accordingly, the Division's decision denying her application is affirmed. Because Ms. B is not eligible for a 2010 PFD, her child, J Y, does not have an eligible sponsor and she is also not eligible to receive a 2010 PFD.

DATED this 22<sup>nd</sup> day of March, 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 19<sup>th</sup> day of April, 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.]