

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

In the Matter of:)	
)	
M. H. M.)	
)	OAH No. 11-0168-PFD
<u>2010 Permanent Fund Dividend</u>)	Agency No. 2010-059-0291

DECISION

I. INTRODUCTION

Ms. M. submitted her application for a 2010 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (Division) denied her application because she had answered “no” to the question of whether she intends to return to Alaska indefinitely. After completing the informal appeal process, Ms. M. requested a formal hearing by correspondence. Ms. M. and the Division have submitted written position statements.

Based on the evidence in the record, Ms. M. is entitled to receive a 2010 PFD.

II. FACTS

Ms. M. attends college in Washington State.² She was absent from Alaska for 6 days for a vacation from August 15, 2009 through August 21, 2009.³ She was also absent to attend college beginning on September 17, 2009,⁴ and returning to Alaska on December 15, 2009.⁵ Thus, she was absent for a total of 95 days during the 2009 qualifying year.

In completing her 2010 Audit Form, Ms. M. answered “no” to the question “are you returning to Alaska to remain indefinitely?”⁶

III. DISCUSSION

Alaska law sets out a list of requirements to be eligible to receive a PFD. The three requirements relevant to this case are that the applicant must 1) be a state resident on the date of application; 2) be a state resident during the entire qualifying year; and 3) be present in Alaska during the entire qualifying year unless absent for an allowable reason.⁷ There is no dispute in this case that Ms. M. was absent for an allowable reason. During the bulk of her absence, she

¹ Exhibit 1.
² Exhibit 1, page 3.
³ Exhibit 1, page 2.
⁴ Exhibit 1, page 2.
⁵ Applicant’s Position Statement.
⁶ Exhibit 3.
⁷ AS 43.23.005(a).

was receiving postsecondary education on a full time basis.⁸ This is an allowable absence under AS 43.23.008(a)(1). A person claiming an absence for receiving postsecondary education is also allowed additional days of absence for any reason up to a total of 120 days.⁹ Ms. M.’s absences were well within this limit. Thus, her absence from the state during the qualifying year does not make her ineligible to receive a PFD.

Whether Ms. M. was a state resident during the entire qualifying year and as of the date of her application is a more difficult question. Not every resident who leaves Alaska to attend college or university retains their Alaska residency.

To be a state resident, one must be “physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.”¹⁰ Once residency is established, a person does not lose his or her state resident status by being absent unless

during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.^[11]

Ms. M. signed her application on March 10, 2010, so the question is whether she was a state resident as of that date.¹² There is no evidence in the record that Ms. M. affirmatively claimed residency in another state. There are, however, indicators in the record that Ms. M. had abandoned her Alaska residency. On the 2010 Audit form, she indicated that she was not returning to Alaska to remain indefinitely.¹³ This form was not completed until January 6, 2011, nearly ten months after Ms. M. filed her PFD application.¹⁴ While this answer suggests that she may have abandoned her Alaska residency, it is not necessarily indicative of her intent as of March 10, 2010.

In her informal appeal, Ms. M. states:

During the year in question [2009] I was gone from Alaska for only twelve weeks. I spent the majority of my time in Alaska. The following year [2010] I only spent two weeks in Alaska and will not be applying for my PFD for that year

⁸ Exhibit 1, page 3.

⁹ AS 43.23.008(a)(17)(B).

¹⁰ AS 01.10.055(a).

¹¹ AS 01.10.055(c).

¹² 15 AAC 23.993(b) (date of application is the date it was filed or delivered). It is not clear from the record when the application was actually filed or delivered, but the Division uses March 10, 2010 as the filing date in its position statement.

¹³ The actual question asked was “are you returning to Alaska to remain indefinitely?” It asks about the applicant’s present status – are you returning – rather than the applicant’s intent for the future.

¹⁴ Exhibit 3.

because I did not consider Alaska my home for that year. The year in question, however, I would very much consider Alaska my home for I hardly left it.^[15]

This statement was written in February of 2011, so while it can be read to suggest that Ms. M. may have abandoned her residency, it is not very strong evidence that she did so prior to March 10, 2010.¹⁶

Ms. M.'s answer on the Audit form and her statement in her informal appeal suggest that at some point she may have decided not to return to Alaska indefinitely, thus abandoning her Alaska residency.

There is also evidence in the record that Ms. M. did not understand what is meant by intending to return to Alaska and remain indefinitely. In her formal appeal, she wrote:

Other than leaving the state for college, I have not done anything that would indicate a permanent move from Alaska. I marked that I wasn't intending to remain in Alaska indefinitely because I don't know if I will or not. I'm just a sophomore in college. For now I retain my Alaskan residency and don't intend on changing residency any time soon.^[17]

In her pre-hearing statement, Ms. M. states:

I marked that I was not returning to Alaska indefinitely. After a phone call from Konnie Vos (Exhibit 5), I was further confused. The big confusion was over the word indefinitely. Indefinitely is defined as "for an unlimited or unspecified period of time." Since my original application (Exhibit 1 page 2 of 3), I have returned to Alaska twice, and am returning to Alaska on June 9th, 2011, and will be staying in Alaska until the third week of September (see further attached documents). On June 13th, I will be working for Alaska Public Lands in Anchorage, AK (see documents). All of these facts prove that I have, and I am, returning to Alaska indefinitely.^[18]

A case from 2009, *In re M.G.B.*,¹⁹ provides some useful guidance here. In that case, the applicant was also a college student who answered that he did not intend to return to Alaska indefinitely.

His reason for answering "no," which he explained to an eligibility technician who contacted him by telephone, was that he did not know if he would be able to find employment in Alaska following his graduation, so if he were offered a job outside of Alaska, he would take it. He also answered "no" because he knew he would be traveling back and forth from Alaska to New York for college through

¹⁵ Exhibit 6, page 2.

¹⁶ In addition, the statement that she did not consider Alaska her "home for that year" is not necessarily inconsistent with the intent to return to Alaska indefinitely. One is allowed to maintain a principal home out of state while absent to receive postsecondary education. 15 AAC 23.143(d)(1)(A).

¹⁷ Exhibit 8, page 2.

¹⁸ M. pre hearing statement.

¹⁹ OAH No. 09-0474-PFD (Dept of Revenue 2010).

at least the middle of 2012, so in the short term, he would not be staying in Alaska indefinitely.²⁰

In holding that the applicant was entitled to a 2009 PFD, the ALJ noted that the applicant had simply acknowledged that his employment several years in the future was uncertain. Despite this acknowledgment, the weight of the evidence was that the applicant had not taken action inconsistent with retaining his Alaska residency.

In another similar case, the ALJ stated:

During the uncertain period when a young person is thinking about the future and considering moving away from Alaska, that person remains an Alaska resident. Students attending college out of state are often uncertain of what their futures will bring, and it is not uncommon for students to candidly admit that, while they plan to return to Alaska after graduating, they are open-minded about opportunities that might arise elsewhere. So long as their intent remains to return to Alaska upon graduation, open-mindedness about a future elsewhere is not enough to sever Alaska residency. But if a student abandons the intent to return to Alaska, the remaining possibility that the student might yet return upon receiving a satisfactory job offer is not enough to say that the person has maintained the intent at all times to return to Alaska to make a home.²¹

The question of fact to be resolved in this matter is whether Ms. M. abandoned her intent to return to Alaska indefinitely on or before March 10, 2010. It is not enough for her to show the intent to return for school breaks and summers while in college. She must have maintained the intent to return for an indefinite period of time once she is finished with her college education. Because she is appealing the Division's decision, she has the burden of proof on this question.²²

Resolving this question is more difficult because this is a hearing by correspondence and Ms. M.'s testimony was not available in person or by telephone. There is enough in the written record, however, to determine that Mr. M. has met her burden of proving that, at least as of March 10, 2010, she continued to have the intent to return to Alaska indefinitely.

Ms. M. did not take any affirmative action inconsistent with an intent to remain a state resident prior to and including the date of her application. She maintained her paper ties to Alaska by keeping her Alaska Driver License,²³ voting in Alaska,²⁴ and paying non-resident tuition for college in Washington.²⁵ Ms. M. has also returned to Alaska several times since

²⁰ *In re M.G.B.*, page 2 (internal footnotes omitted).

²¹ *In re M.B.*, OAH No. 09-0130-PFD (Dept of Revenue 2009).

²² 15 AAC 05.030(h).

²³ Exhibit 8, page 4.

²⁴ Applicant's Position Statement.

²⁵ Applicant's Position Statement & Exhibit 1, page 3.

leaving for college, and her parents both live in Alaska.²⁶ In addition, subsequent statements by Ms. M. suggest she may not have fully understood the questions asked when she said she did not have the intent to return to Alaska indefinitely. The weight of the evidence is that, as of March 10, 2010, Ms. M. had not abandoned her Alaska residency. It is not necessary for this hearing to determine whether she abandoned her Alaska residency after that date.

IV. CONCLUSION

Ms. M. was absent from Alaska in order to receive a postsecondary education on a full time basis. As of the date of her application, she had not taken any action to sever her residency in Alaska. She has met her burden of proving that the Division's decision was incorrect and that she is entitled to receive a 2010 PFD.

Dated this 20th day of June, 2011.

Signed

Jeffrey A. Friedman
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 19th day of July, 2011.

By: *Signed* _____
Signature
Jeffrey A. Friedman _____
Name
Administrative Law Judge _____
Title

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