

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

In the Matter of : )  
 )  
R and G G, )  
individually and *ex rel.* their minor children )  
O, M, S and P G ) OAH No. 11-0218-PFD  
2010 Alaska Permanent Fund dividend ) DOR Nos. 2010-045-1097/1550

**DECISION**

**I. Introduction**

The Permanent Fund Dividend Division denied the applications of R and G G for 2010 Alaska Permanent Fund dividends on the ground that (1) they maintained their principal home in another state.<sup>1</sup> In addition, R's application was denied on the ground that (2) he accepted full time, permanent employment in another state,<sup>2</sup> and G's was denied on the ground that (3) she had been absent for more than the time allowed by law.<sup>3</sup> The Division denied the applications of the G children on the ground that (4) they lacked an eligible sponsor.<sup>4</sup>

The Gs filed appeals, which were referred to the Office of Administrative Hearings, and the assigned administrative law judge conducted a telephonic hearing on July 5, 2011. Mr. G participated on behalf of all the family members. Bethany Chase represented the Division. Because R and G G maintained their principal home in another state while absent from Alaska for a disqualifying reason, they are ineligible for the 2010 dividend. Because they are both ineligible, and their children lack an eligible sponsor, the Division's decision to deny the applications is sustained.

**II. Facts**

R and G G moved to Alaska in 1998<sup>5</sup> with their children M, S and P.<sup>6</sup> In December, 2000, the couple adopted a fourth child, O.<sup>7</sup> Mr. G was on active duty in the United States Air Force. In September, 2001, Mr. G was posted to a duty station at Edwards Air Force Base, and

---

<sup>1</sup> Ex. 8, pp. 1 (R), 6 (G)

<sup>2</sup> Ex. 8, p. 1.

<sup>3</sup> Ex. 8, p. 6.

<sup>4</sup> Ex. 8, pp. 11 (O), 14 (M), 17 (S), 20 (P).

<sup>5</sup> Ex. 1, pp. 1 (Q9), 4 (Q9); Ex. 3, p. 7; Ex. 4, p. 4.

<sup>6</sup> See Ex. 1, pp. 9 (M), 11 (S), 13 (P).

<sup>7</sup> Ex. 6, p. 6.

the family moved to California.<sup>8</sup> Subsequently, in 2004, Mr. G was posted to a duty station at an air base in Arizona, and the family moved there.<sup>9</sup>

In January, 2008, Mr. G retired from the military. O G has been diagnosed with serious mental, emotional and physical health problems that require 24 hour care. She is being treated, and has been for several years, at a residential treatment facility in Arizona. The treatment she obtains at that location is not available in Alaska. In order to be near their daughter and to provide additional care for her, the Gs did not return to Alaska after Mr. G's retirement, but instead remained in Arizona. In order to support his family, Mr. G obtained full time permanent employment there.

The Gs have maintained substantial paper ties to Alaska. They purchased an undeveloped lot in Seward in 2009, with the plan of eventually building a home there and returning permanently to Alaska. They regularly received Alaska Permanent Fund dividends until 2010.

### **III. Discussion**

In addition to being an Alaska resident, in order to receive an Alaska Permanent Fund dividend, an individual must meet the eligibility requirements established by the Division in its regulations.<sup>10</sup> The Division has promulgated a number of regulations under which even an Alaska resident may be ineligible for the dividend.<sup>11</sup> In this case, the Division relies on two of those regulations: 15 AAC 23.143(d)(1) (maintaining a principal home in another state); and 15 AAC 23.143(d)(2) (accepting full-time, permanent employment in another state).

#### **A. The Adult Gs Are Ineligible Pursuant To 15 AAC 23.143(d)(1)**

15 AAC 23.143(d)(1) provides that an otherwise eligible applicant is ineligible if, during the qualifying year, the applicant has “maintained the individual’s principal home in another state..., except while absent for a reason listed (A) in AS 43.23.008(a)(1)-(3), (9)-(11), or (16);

---

<sup>8</sup> See Ex. 3, p. 4; Ex. 6, p. 6.

<sup>9</sup> See Ex. 3, p. 4; Ex. 6, p. 6.

<sup>10</sup> The Alaska Supreme Court has expressly held that the Division has authority to establish eligibility requirements by regulation that restrict the eligibility of persons who are residents for purposes of AS 01.10.055. Harrod v. State, Department of Revenue, \_\_\_ P.3d \_\_\_ (Alaska 2011) (Op. No. 6582, July 22, 2011).

<sup>11</sup> Several such regulations have been approved by the Alaska Supreme Court. See Church v. State, Department of Revenue, 973 P.2d 1125 (Alaska 1999); Brodigan v. Alaska Department of Revenue, 900 P.2d 728 (Alaska 1995); State, Department of Revenue, Permanent Fund Division v. Bradley, 896 P.2d 237 (Alaska 1995); State, Department of Revenue, Permanent Fund Division v. Cosio, 858 P.2d 621 (Alaska 1993).

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.”

Mr. G has not argued that he and his wife did not maintain their principal home in Arizona throughout 2009. Thus, in order to avoid disqualification under 15 AAC 23.143(d)(1), he must show that either he or his wife was absent for a reason listed in AS 43.23.008(a)(1)-(3) or (9)-(11), (13) or (16). Subsections (1), (2) and (16) allow absences for educational purposes, and neither R nor G was absent for that reason. Subsection (3), which had previously applied to allow Mr. G’s absence as an active duty member of the military, no longer applied after he retired from the military in 2008. Subsections (9)-(11) allow absence for public employment and does not apply to either of them.

The only remaining provision is subsection (13), which allows an absence “as the spouse, minor dependent, or disabled dependent of [an] eligible resident” who is absent “for a reason permitted under [AS 43.23.008(a)](1), (2), (5)-(12), (16), or (17).” Neither R nor G as a minor or disabled. However, each is the spouse of the other, and thus if either of them was absent for a reason specified in subsections (5)-(8), (12) or (17) (the remaining subsections have already been deemed inapplicable to both), they both fall within the scope of AS 43 23.008(a)(13). But not every absence while accompanying a spouse that is within the scope of AS 43.23.008(a)(13) avoids the “principal home” disqualification: only if the spouse was absent for a reason that is listed in 15 AAC 23.143(d)(1)(A) is the “principal home” disqualification avoided.<sup>12</sup> The reasons listed in 15 AAC 23.143(d)(1)(A) are AS 43.23.008(a)(1)-(3), (9)-(11), or (16), none of which, as has already been mentioned, applies to Mr. G or his wife.

Mr. G’s argument that he should be deemed eligible because he was absent while accompanying his daughter during her medical treatment conflates an allowable absence for purposes of the length of time one may be absent from Alaska, with an allowable absence for purposes of maintaining one’s principal home outside of Alaska. One reason for absence that is allowable under AS 43.230.008(a) for purposes of the length of time a resident may be absent but remain eligible, but which is not listed in 15 AAC 23.143(d)(1) as an acceptable reason for a resident to maintain a principal home in another state, is AS 43.23.008(a)(12), which allows an absence while “accompanying a minor who is absent under [AS 43.23.008(a)(5)].” AS

---

<sup>12</sup> See 15 AAC 23.143(d)(1)(B) (allowing maintenance of principal home outside of Alaska if absent for specified reasons while accompanying a spouse who “is absent for a reason listed in (A) of this section”).

43.23.008(a)(5) provides that a resident may be absent and remain eligible while “receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change.” Both Mr. G and his wife are absent for the purpose of accompanying their daughter, O, while she is absent in order to obtain vital medical and mental health care that is unavailable in Alaska. Pursuant to AS 43.23.008(a)(12), the elder Gs’ absence from Alaska throughout the qualifying year did not make them ineligible, and pursuant to AS 43.23.008(a)(5), O’s absence did not make her ineligible. However, pursuant to 15 AAC 23.143(d)(1), neither a resident of Alaska who is absent while accompanying a minor who is receiving medical treatment, nor the minor, may establish their principal home in the state of treatment and remain eligible. It is not the length of the absence that makes those persons ineligible, but the fact that they maintain their principal home in another state.

Because R and G G maintained their principal home in Arizona during 2009, while absent for a reason not listed in 15 AAC 23.143(d)(1), they are ineligible for the 2010 dividend.<sup>13</sup>

**B. The G Children Are Also Ineligible**

The applications for the Gs’ minor children were filed by R, who cannot act as their sponsor because he is ineligible. Because the applications were filed by an ineligible sponsor, they were properly denied on that ground. However, although neither R nor G could act as the sponsor, that does not mean that no other person could act as the sponsor.<sup>14</sup> But regardless of whether an appropriate sponsor could be identified, the G children would be ineligible under 15 AAC 23.143(d)(1) for the same reason that their parents are not eligible: they maintained their principal home (with their parents or, perhaps, for O, at her residential treatment facility) in Arizona throughout 2009.

In order to avoid disqualification under 15 AAC 23.143(d)(1), each of the children must have been absent for a reason listed in AS 43.23.008(a)(1)-(3) or (9)-(11), (13) or (16). While the minor children were no doubt enrolled in school, that was not the reason for their absence, and thus subsections (1), (2) and (16) do not apply to any of the children. Subsection (3) applies

---

<sup>13</sup> Because it is undisputed that Mr. G accepted full time, permanent employment in Arizona, this conclusion means that he is also ineligible pursuant to 15 AAC 23.143(d)(4), which contains language identical to 15 AAC 23.143(d)(1)(A) and (B).

<sup>14</sup> See 15 AAC 23.113(g), (i).

to active duty military personnel, and subsections (9)-(11) allow absences for public employment; none of those subsections applies to the children. The only remaining provision is subsection (13), which allows an absence “as the spouse, minor dependent, or disabled dependent of [an] eligible resident.” The children are the minor dependents of ineligible residents, and thus subsection (13) does not apply.

Because the children’s primary home was in Arizona, and none of them was absent for a reason allowed in 15 AAC 23.143(d)(1), none of them is eligible for the 2010 dividend. Accordingly, there is no need to attempt to identify a substitute sponsor, and the Division correctly denied their applications for lack of an eligible sponsor.

**IV. Conclusion**

The primary home of each of the Gs throughout 2009 was located in Arizona. None of the Gs was absent for a reason that is listed in 15 AAC 23.143(d)(1)(A). Accordingly, each of them is ineligible for the 2010 Alaska Permanent Fund dividend. The denial of their applications is therefore **AFFIRMED**.

DATED October 6, 2011

Signed  
\_\_\_\_\_  
Andrew M. Hemenway  
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 4<sup>th</sup> day of November, 2011.

By: Signed  
\_\_\_\_\_  
Signature  
Andrew M. Hemenway  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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