

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

In the Matter of:)
)
 J. S.)
) OAH No. 11-0241-PFD
) Agency No. 2010-066-5066
2010 Permanent Fund Dividend)

DECISION

I. INTRODUCTION

J. S. applied for a 2010 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (Division) denied his application because Mr. S. indicated that he did not intend to return to Alaska to remain indefinitely.²

Mr. S. filed an informal appeal, and after a decision on his informal appeal was issued, he requested a formal hearing by written correspondence.³ After filing its Formal Hearing Position Statement, the Division filed a Motion to Dismiss Appeal. In that motion, the Division agreed that Mr. S. was eligible to receive a 2010 PFD.

Based on the assertions by Mr. S. in the record, and the Division’s concession, The Division’s denial of Mr. S.’s application is reversed. Mr. S. is entitled to receive a 2010 PFD.

II. FACTS

The relevant facts are not in dispute.⁴ Mr. S. was born and raised in Alaska. He is currently a college student living out of state, but returns to Alaska in the summer. He has an Alaska driver license and is registered to vote in Alaska. On both his 2009 and his 2010 PFD applications, however, he answered “no” to the question that asked whether he intends to return to Alaska to remain indefinitely.

III. DISCUSSION

A person is not eligible to receive a PFD if he or she is not a state resident during the entire qualifying year and on the date of application.⁵ A person who is absent from Alaska does not lose his or her residency as long as he or she has the intent to return to Alaska and remain

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 6.

⁴ These factual findings are based on Mr. S.’s statements made when requesting a formal hearing. Exhibit 6, pages 5 – 12.

⁵ AS 43.23.005(a)(2) & (3).

indefinitely.⁶ Mr. S.'s answer on his application that he did not intend to return to Alaska and remain indefinitely suggested that he had severed his Alaska residency and, therefore, was not eligible for a PFD.

Mr. S. explained, however, that his answer was not intended to mean that he would never return to Alaska to remain indefinitely. He answered "no" because he had plans to finish college. After each trip home he could not honestly say he intended to remain indefinitely because he knew that he would be leaving again for college. As he explained, a typical student going to college out of state could answer this question either yes or no, depending on how the question is interpreted.

It could mean that the person will return to Alaska, but if they have definite plans to leave Alaska and return to college they should answer "no". It could mean that when they have completed college and no longer have an allowable absence they will return to Alaska and they have no define [sic] plan to move away from Alaska then they would answer "yes". The important point is that the same person with the same intent could answer either "yes" or "no".^[7]

Given Mr. S.'s ties to Alaska, his frequent return trips during college breaks, and the ambiguity of the question asking about the applicant's intent to return, the Division properly conceded that Mr. S. was eligible to receive a PFD.⁸

Although the Division conceded that Mr. S. should prevail in this appeal, it is not possible to simply dismiss this matter. A party who requested an administrative hearing may voluntarily dismiss his or her case without the consent of the opposing party any time before a proposed decision is issued.⁹ An agency may request dismissal of a case if the person requesting the hearing consents or fails to oppose the motion to dismiss.¹⁰ Absent the consent of the person who requested the hearing, the case may not be dismissed for 15 days to determine whether the motion will be opposed.¹¹ In this case, Mr. S. did not consent to having his case dismissed. The Motion to Dismiss was e-mailed to him on July 21, 2011.¹² Instead of consenting to the motion,

⁶ AS 43.23.095(7).

⁷ Exhibit 6, page 9. Mr. S. is not the first college student to be confused by this question. *See, In re M.G.B.*, OAH No. 09-0474-PFD (Dept of Revenue 2010); *In re M.H.M.*, OAH No. 11-0168-PFD (Dept of Revenue 2011).

⁸ Motion to Dismiss.

⁹ 2 AAC 64.230(a). After the proposed decision is issued, the consent of the other parties and the final decisionmaker is required. 2 AAC 64.230(b).

¹⁰ 2 AAC 64.230(c).

¹¹ 2 AAC 64.230(a) and 2 AAC 64.270(a) (providing 15 days to oppose a motion).

¹² Motion to Dismiss, certificate of service.

he filed a response to the Formal Hearing Position Statement.¹³ Although he did not specifically state that he has opposed the motion to dismiss, the fact that Mr. S. filed a pleading other than a non-opposition, and his status as a non-attorney, suggests that he has not consented and instead wants a formal decision issued in response to his request for a hearing.

IV. CONCLUSION

For the reasons discussed above, Mr. S. is entitled to a 2010 PFD. The decision of the Division to deny his application is reversed.

Dated this 3rd day of August, 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 30th day of August, 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.]

¹³ Response to Division's Formal Hearing Position Statement, dated July 30, 2011.