

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

|                                     |   |                           |
|-------------------------------------|---|---------------------------|
| In the Matter of:                   | ) |                           |
|                                     | ) |                           |
| L H                                 | ) | OAH No. 11-0282-PFD       |
|                                     | ) | Agency No. 2011-014-04925 |
| <u>2011 Permanent Fund Dividend</u> | ) |                           |

**CORRECTED DECISION AND ORDER<sup>1</sup>**

**I. Introduction**

This case is K H's appeal of denial of her daughter, L H's, application for a 2011 Alaska Permanent Fund Dividend (PFD). Ms. H timely applied for her 2011 PFD. Ms. H's application was denied by the Permanent Fund Dividend Division (Division) because an application had been filed for L H by the Department of Health and Social Services and because the Division determined that L H had move from Alaska in 2009. Ms. H requested an informal appeal and was again denied. Ms. H then requested a formal hearing by correspondence.

Administrative Law Judge Mark T. Handley heard the appeal. PFD specialist Bethany Chase represented the Division and filed a position paper. Ms. H did not file a response to the Division's position paper. The record in this appeal closed on September 19, 2011.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that the child, L H, does not qualify for a 2011 dividend, because she moved from Alaska under circumstances that were inconsistent with continued Alaska residency in 2009 and did not move back to Alaska until 2010. Ms. H therefore lost her Alaska residency and did not reestablish her Alaska residency in time to qualify for a 2011 PFD.

**II. Facts**

L H was a resident of Alaska who qualified for the 2009 PFD. L H was absent from Alaska for more than 180 days during 2009. She left Alaska as a child in the custody of the State of Alaska, who was placed with her father, a resident of Iowa in 2009. This placement was intended to be an indefinite or permanent placement but it lasted only nine months. L H returned to Alaska on February 23, 2010.<sup>2</sup>

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<sup>1</sup> In the Matter of K H Decision and Order was issued and distributed to the parties. The Division filed a letter requesting that typographical errors discovered in the proposed decision by corrected. Therefore, this corrected decision is adopted as the final decision in place of the original proposed decision. This corrected decision is issued under the authority of 2 AAC 64.350(b).

<sup>2</sup> Exhibit 1-5 & Division's position paper.

In her request for an informal appeal, Ms. H explained that her daughter had always lived in Alaska except for the absence to live with her father.<sup>3</sup> In her request for a formal hearing, Ms. H again wrote that she believed that her daughter should qualify for a 2011 PFD because she had returned to Alaska in February of 2010 and had been present in Alaska except for her absence in 2009 and 2010.<sup>4</sup>

Based on the evidence in the record, I find that in 2009, L H moved Iowa to live with her father and the move was intended to be permanent by the State and by her father who had legal and physical custody of her at that time.<sup>5</sup>

### **III. Discussion**

To qualify for the 2011 PFD, an applicant must meet the eligibility requirements during all of the 2010, the qualifying year for the 2011 PFD, and through the date of application. As applied to Ms. H's application, that means her daughter must have been an Alaska resident during all of 2010.<sup>6</sup> To be an Alaska resident, one must not claim residency in the other state, or be absent under circumstance that are inconsistent with the intent required to remain a resident of Alaska during an absence.<sup>7</sup>

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Ms. H, has the burden of proving by a preponderance of the evidence that the denial is incorrect.<sup>8</sup> Ms. H did not show by a preponderance of the evidence that her daughter is eligible to receive a 2011 PFD. Ms. H admitted that her daughter was absent from Alaska living with her father. The evidence in the record shows that L H moved Iowa to live with her father and the move was intended to be permanent by her father and the State of Alaska, who had legal and physical custody of her at that time.

In January of 2010 L H was still living in Iowa after having established residency in that state in 2009. The circumstances of this absence were inconsistent with maintaining Alaska residency. She did not move back to Alaska before the beginning of the 2011 qualifying period.

Ms. H's confusion about the PFD eligibility requirements is understandable. It was not just her daughter's absence, but the undisputed facts showing that she established Iowa residency

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<sup>3</sup> Exhibit 3.  
<sup>4</sup> Exhibit 5.  
<sup>5</sup> Exhibit 1-5 & Division's position paper.  
<sup>6</sup> Alaska Statute AS 43.23.005(a).  
<sup>7</sup> AS 01.10.055(c).  
<sup>8</sup> Alaska Regulation 15 AAC 05.030(h).

during her absence which disqualify her. Alaska law prevents a PFD applicant from qualifying for an Alaska PFD, a benefit of Alaska residency, if the applicant was absent during the PFD qualifying period under circumstances that are inconsistent with the intent to remain an Alaska resident.<sup>9</sup> A child's intent for state residency purposes is dependent on the intent of those who have legal and physical custody of the child during the relevant time frame and who therefore decide where the child will be living.<sup>10</sup> In this case, the State of Alaska had custody and placed the child indefinitely with her father, who was a resident of Iowa. Her father took his daughter in to his home as a result of an indefinite placement. He had no plans to send her back to Alaska when she first moved in with him. When that happened, the child lost her Alaska residency. She could not re-establish her residency before she returned to Alaska in 2010. This was too late to qualify for the 2011 PFD.

#### **IV. Conclusion**

Ms. H failed to show by a preponderance of the evidence that she maintained her Alaska residency during her absence from Alaska that ended in 2010. The Division's decision is upheld. L H is not eligible to receive the 2011 PFD.

DATED this 21st day of February, 2012.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>9</sup> Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

<sup>10</sup> Alaska Regulation 15 AAC 23.133(h).

## 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 21<sup>st</sup> day of February, 2012.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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