

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

In the Matter of:)
)
 J & Z I,)
 (minor children))
) OAH No. 11-0288-PFD
2011 Permanent Fund Dividend) Agency No. 2011-011-5180/5230

DECISION

I. INTRODUCTION

F I submitted applications for a Permanent Fund Dividend (PFD) on behalf of her two children, J and Z.¹ The Permanent Fund Dividend Division (Division) denied these applications based on a determination that Mrs. I was not eligible for a PFD herself, and therefore could not be a sponsor for her children.² Mrs. I requested an informal appeal. In that appeal request, her husband, Y I sought to be substituted as the children’s sponsor.³

The Division denied Mrs. I’s informal appeal. In doing so, the Division indicated that Mrs. I was not an eligible sponsor and further stated that there was no other appropriate sponsor for either child.⁴ There was no explanation as to why Mr. I was not eligible to sponsor his children.

Mrs. I appealed, and requested a formal hearing.⁵ The issue identified for appeal was that Mr. I was the new sponsor for the couple’s children. Mrs. I did not contest the determination that she was not eligible herself.

A hearing was held on August 26, 2011. Mrs. I participated by telephone. The Division was represented by PFD Specialist Peter Scott, who also appeared by telephone. The record was left open until September 6 to allow for the submission of additional information.

Based on the evidence in the record and on the applicable law, Mrs. I is not eligible to sponsor her two children’s applications. Her husband may be eligible however, and should be

¹ Exhibit 1.
² Exhibit 2
³ Exhibit 3, pages 2 & 4.
⁴ Exhibit 4, pages 1 & 4.
⁵ Exhibit 5.

substituted as the children's sponsor. Whether J and Z I are currently eligible to receive 2010 PFDs is dependent on whether Mr. I is determined to be eligible.

II. FACTS

Mr. and Mrs. I are the parents of J and Z I.⁶ In October of 2010, Mrs. I travelled to Hawaii to help care for her sick mother.⁷ J and Z flew to Hawaii on November 13, 2010. Mrs. I and Z returned to Anchorage in February of 2011. J had returned two or three weeks earlier. They had all wanted to return to Anchorage in January, but it was difficult to obtain earlier flights.

Mrs. I applied for public assistance and food stamps from the State of Hawaii on October 18, 2010.⁸ This application was for herself and four nieces and nephews.⁹ A different niece had been caring for these children, but had left and Mrs. I was the only adult relative available to apply for assistance for them. Mrs. I indicated on the application that she did not want financial assistance for herself but only for her nieces and nephews.¹⁰ J and Z were added to the household for food stamps only on December 6, 2010.¹¹ A print out from the State of Hawaii shows that while all three of the Is did receive food stamps, the financial aid was only paid for the four nieces and nephews (A, B, C, and E).¹²

Before departing for Hawaii, the I family had been in a rented apartment. On November 10, 2010, Mr. I signed a Notice of Intention to Vacate.¹³ As the reason for leaving, he stated "can't afford rent." After returning to Alaska, the family lived in a shelter for several months, and then obtained living accommodations through Alaska Housing.

III. DISCUSSION

Children may only receive a PFD if they have an adult sponsor who is eligible to receive a PFD.¹⁴ J and Z's applications were denied because the Division determined that Mrs. I was not eligible for a PFD and, therefore, was not a qualified sponsor for her children.¹⁵ In response,

⁶ Exhibit 10, pages 1 & 2.

⁷ Factual findings are based on Mrs. I's testimony unless otherwise indicated.

⁸ Exhibit 19, page 12.

⁹ Exhibit 19, page 3.

¹⁰ Exhibit 19, page 13.

¹¹ Exhibit 21, pages 1 & 3.

¹² Exhibit 16, page 3.

¹³ Exhibit 13, page 2.

¹⁴ 15 AAC 23.113(b). The exceptions to this rule are not applicable in this case.

¹⁵ Exhibit 2, pages 1 & 3.

Mrs. I requested that her husband be substituted as the children’s sponsor.¹⁶ In its Formal Hearing Position Statement, the Division lists four reasons why Mrs. I is not eligible for a PFD and therefore why J and Z do not have an eligible sponsor.

A. Receipt of Benefits by Claiming Hawaii Residency

The Division asserts that Mrs. I is ineligible to be the children’s sponsor because she received public assistance benefits in Hawaii. A person is not eligible for a PFD if from January 1 of the qualifying year through the date of application, he or she has “obtained any other benefit or benefits as a result of establishing or maintaining any claim of residency in another state or country[. ¹⁷]” Mrs. I did not request financial assistance for herself or her children from the State of Hawaii. On the application form, she specifically stated “yes” to the statement that said “I do not want help for myself. I want help for a child who is not my own child.”¹⁸ The exhibits submitted by the Division show that only Mrs. I’s nephews and nieces received financial assistance.¹⁹ While there are some e-mail messages that could be interpreted to say that Mrs. I also received financial assistance or claimed Hawaii residency,²⁰ those hearsay statements are not persuasive. There was no opportunity to cross-examine the authors of the e-mails to clarify what they meant by their statements, and the actual records show that Mrs. I did not claim Hawaii residency for herself or receive financial assistance for herself.²¹

Mrs. I and her two children did receive food stamps. Under Hawaii regulations, one must be a resident of the state to receive financial assistance.²² That requirement does not exist for receipt of food stamps. Instead, the recipient must only be living in the appropriate area to receive food stamps, and there is no durational residency requirement.²³ This is consistent with federal law which prohibits a state from imposing a requirement that food stamp recipients intend to reside permanently in that state.²⁴

¹⁶ Exhibit 3, pages 2 & 4.

¹⁷ 15 AAC 23.143(d)(17).

¹⁸ Exhibit 19, page 13.

¹⁹ Exhibit 16, page 3.

²⁰ *E.g.*, Exhibit 15, page 2.

²¹ The undersigned ALJ has found nothing in the applications signed by Mrs. I that informs an applicant that he or she must be a resident of Hawaii to receive financial assistance. Even if Mrs. I had received such assistance, there is no evidence in the record that she claimed to be a resident of Hawaii or that she was told that she must be a resident to receive assistance.

²² Hawaii Administrative Rules, §17-655-25(a). As noted in footnote 22, there is no evidence in the record that Mrs. I was aware of this requirement.

²³ Hawaii Administrative Rules, §17-655-26(a) & (f).

²⁴ 7 CFR 273.3(a).

The State of Hawaii could not and did not condition Mrs. I's food stamp eligibility on a claim that she intended to reside permanently in Hawaii. There is no evidence in the record that she did establish or maintain a claim of residency in Hawaii. Accordingly, the receipt of food stamps by Mrs. I did not make her ineligible to sponsor her children's applications.

B. Failure to Maintain Principal Home in Alaska

J and Z left Alaska in November of 2010. Mr. I vacated the family's apartment in December of 2010.²⁵ From that date until some time in 2011, the family did not have a principal home in Alaska. With some exceptions that are not relevant here, a person who maintains a principal home in another state is not eligible to receive a PFD.²⁶ This does not mean, however, that one must maintain a principal home in Alaska to remain eligible.²⁷

The Division argues that the lack of a principal home in Alaska is an indicator that Mrs. I no longer intended to remain in Alaska indefinitely. As long as the absence from Alaska is consistent with the intent to remain a state resident, the I family could be absent from the state for up to 180 days and still be eligible for a PFD.²⁸ Choosing not to pay rent for an empty apartment during a two or three month absence is not inconsistent with the intent to return and remain in Alaska indefinitely. That they did give up their principal residence is certainly a factor that might cause the Division to inquire further about the family's intent, it is not, in and of itself, sufficient to show a lack of intent to remain an Alaska resident.

C. Intent to Remain in Alaska

The Division did have additional evidence that Mrs. I did not intend to remain in Alaska indefinitely. On November 10, 2010, Mr. I gave thirty days notice of the family's intent to vacate their apartment.²⁹ The stated reason for leaving was "can't afford rent."³⁰ Based on this statement, the Division concluded that the family traveled to Hawaii because they hoped to find more affordable living arrangements there and would not be returning to Alaska. According to the Division, only after finding that Hawaii did not meet their expectations did the Is decide to return to Alaska.

²⁵ Exhibit 13, page 1.

²⁶ 15 AAC 23.143(d)(1).

²⁷ See *In re K.G.*, OAH No. 09-0257-PFD (Dept of Revenue 2009), pages 4 – 5.

²⁸ AS 43.23.008(a)(17)(A).

²⁹ Exhibit 13, page 2.

³⁰ *Id.*

Through her testimony, however, Mrs. I met her burden of proving that the Division's inference was not correct. She testified that the family had originally been planning to visit Hawaii for her mother's 70th birthday in early December. When her mother became ill, Mrs. I left Alaska sooner to help take care of her. The rest of the family then traveled to Hawaii as had originally been planned.

The Is have been Alaska residents since at least January 1, 2006.³¹ The family did return to Alaska in February of 2011, and lived in a shelter until they found an affordable apartment to live in. That the family did not pay for an apartment in Alaska while visiting Hawaii does not establish their lack of intent to return to Alaska. Nor does the statement that they could not afford the rent in their prior apartment. It is not unusual that a family would find that their rent was too high and experience a period of homelessness until finding a new living arrangement. It is also not surprising that this period would overlap the time the family was planning to be out of the state. The preponderance of the evidence is that it is more likely true that the family had planned an extended but temporary stay in Hawaii with the intent all along to return to Alaska.

D. Collateral Estoppel

Collateral estoppel is a legal doctrine that precludes re-litigating issues that have previously been resolved. This doctrine may be applied in PFD cases when an applicant has not appealed the Division's decision at the informal appeal level.³² In this case, the Division determined that Mrs. I was not an eligible sponsor. Mrs. I requested an informal appeal of that determination. An Informal Appeal Decision upheld the prior determination that she was ineligible. Because she did not appeal that informal decision, Mrs. I is bound by it. Because she is not eligible herself, she is not a qualified sponsor for her children.³³

Rather than appeal the determination that she was not eligible, Mrs. I asked the Division to substitute her husband, Y I, as the children's sponsor.³⁴ The Division has not yet determined whether Mr. I is eligible for a 2011 PFD.³⁵ During the hearing, the Division's representative stated that if Mr. I is eligible, he can be substituted as the children's sponsor and the children would receive a PFD. If the Division determines he is ineligible, Mr. I would still have the right

³¹ They were eligible for 2007 PFDs, which would mean they had been residents during all of the preceding year. Exhibit 11.

³² *Harrod v. State*, 255 P.3d 991, 1000 (Alaska 2011).

³³ 15 AAC 23.113(b)(1) (child's sponsor must be eligible for a PFD).

³⁴ Exhibit 3, pages 2 & 4.

³⁵ Exhibit 11, page 2.

to appeal that determination. In addition, J and Z would each have the right to file their own applications for a 2011 PFD after turning 18 or becoming an emancipated minor, and before reaching the age of 20.³⁶

IV. CONCLUSION

For the reasons discussed above, the Mrs. I is not a qualified sponsor for J and Z's applications. The Division should substitute Mr. I as the children's sponsor and determine whether he is a qualified sponsor. If he is, then the children are eligible for a 2010 PFD. If he is not, then each of the children may still file his or her own application for a 2010 PFD after turning 18.

Dated this 9th day of September, 2011.

By: 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 12th day of October, 2011.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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

³⁶ 15 AAC 23.133(b).