

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

In the Matter of:)	
)	
T L)	
)	OAH No. 11-0312-PFD
<u>2011 Alaska Permanent Fund Dividend</u>)	Agency No. 2011-058-2516

DECISION

I. Introduction

T L challenges the Permanent Fund Division’s denial of his 2011 “Child Application” filed on his behalf by his sponsor/mother six days before he turned 18.¹ The division denied T’s application because his mother was not eligible for a 2011 PFD and therefore not eligible to file on his behalf.

Two hearings took place in this matter. The first hearing was held September 12, 2011. T’s mother, P L, participated by telephone as did the division representative, Bethany Chase. This hearing was continued to September 26, 2011 so T could participate. At the September 26, 2011 hearing all parties again appeared telephonically. The division’s decision is affirmed. T is not eligible for a 2011 PFD because as a minor he takes his intent from his parents and his parents took steps inconsistent with the intent to maintain their Alaska residency prior to the filing of T’s application.

II. Facts

The facts are not in dispute. T was born and raised in Alaska. On September 5, 2010, while a minor (age 17), T moved from Alaska to Tennessee to attend the Nashville Auto Diesel College. His parents moved with him because T was only 17 at the time.² Neither T nor his parents left any belongings in Alaska because “they moved.”³ T’s parents claimed their moving expenses as a deduction on their federal income taxes, obtained Tennessee drivers’ licenses, registered to vote, and did vote in a Tennessee election.

Ms. L filed T’s application on line on March 19, 2011” naming herself as T’s sponsor. Six days later, on March 25, 2011, T turned 18. Upon reaching the age of majority, T did not file

¹ The original caption indicated that Mr. L was a minor child. As he is now 18 years of age and was 18 prior to the end of the 2011 PFD application period so it is appropriate to have the caption reflect his current legal status.

² Testimony of P. L.

³ Testimony of P. L.; Testimony of T. L.

his own 2011 Adult PFD Application. The division denied T's application after denying Ms. L's application.

The reasons given by the division for denying Ms. L's application were that Ms. L: left Alaska for unallowable absence, [she] severed [her] Alaska residency by taking inconsistent actions in [sic] maintaining Alaska residency, [she] failed to show the requisite intent to return to Alaska to remain indefinitely and [she] did not meet the definition of "state resident" as it applies to the PFD program during all of calendar year 2010, the qualifying year for the 2011[PFD], and on the date of application.⁴

Ms. L did not appeal the division's denial of her 2011 PFD application.

When the division first denied T's application for lack of an eligible sponsor Ms. L tried to substitute T's aunt who is eligible to be T's sponsor. This request was denied by the division because his aunt did not have physical or legal custody of T in 2010 and T was physically absent from Alaska with his parents at the time of filing.

III. Discussion

To be eligible for a PFD the applicant must be an Alaska resident all through the qualifying year and on the date of application.⁵ The qualifying year for the 2011 PFD is 2010. Alaska residency for purposes of the PFD requires that the applicant be physically present in Alaska with the intent to remain indefinitely in Alaska and to make a home in Alaska.⁶ Once a person has established residency that person remains an Alaska resident during an absence unless residency is established in another state, "or performs other acts or is absent under circumstances that are inconsistent with the intent" to remain in the state indefinitely and make a home in Alaska.⁷

Ms. L is correct that AS 45.23.008 provides that an absence for a vocational school is consistent with maintaining Alaska residency and therefore T is eligible for a PFD. There is another provision under which T could claim he was allowably absent. That provision is AS 43.23.008(a)(17)(A) which provides that a person may be absent for any reason consistent with the individual's intent to remain an Alaska resident" if the absences do not exceed 180 days. T

⁴ Exh. 5 at 1.

⁵ AS 43.23.005(a)(2), (3). The qualifying year is the year immediately preceding January 1 of the dividend year. AS 43.23.095(6).

⁶ AS 01.10.055(a).

⁷ AS 01.10.055(c).

was absent less than 180 days so this provision may apply to him. However, what Ms. L overlooks is that for it to be an allowable absence, T must be “otherwise eligible.”⁸ To be eligible, T must meet seven eligibility criteria including have been an Alaska resident during the entire qualifying year and on the date of his application.⁹ Therefore, the pivotal issue is whether T was an Alaska resident for purposes of the PFD throughout 2010 and up through the date of his application.

The Department of Revenue has promulgated regulations to assist the division in assessing the eligibility of an applicant.¹⁰ Under 15 AAC 23.143(a) an individual’s intent to:

return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:

- (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
- (2) ties to another state or country that indicate continued residency in the other state or country; and
- (3) taken other action during the qualifying year, through the date of application, that is inconsistent with an intent to remain in Alaska indefinitely.¹¹

When assessing whether an applicant has taken some action that may be considered inconsistent with the intent to return to Alaska and remain indefinitely, the applicant’s acts should be considered in light of all the circumstances and not viewed in isolation.¹²

The testimony received was unequivocal that the Ls moved because T was a minor. When the family moved (including T) they left nothing behind in Alaska so it is difficult to

⁸ AS 43.23.005(a).

⁹ AS 43.23.005(a)(2), (3).

¹⁰ The Alaska Supreme Court has upheld regulations restricting eligibility for a PFD beyond the specific statutory requirements of AS 43.23.005(a) and AS 43.23.008. *See Church v. State, Dept. of Revenue*, 973 P.2d 1125 (Alaska 1999); *Brodigan v. Alaska Dept. of Revenue*, 900 P.2d 728 (Alaska 1995); *State, Dept. of Revenue, PFD Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *State, Dept. of Revenue, PFD Division v. Cosio*, 858 P.2d 621 (Alaska 1993).

¹¹ 15 AAC 23.143(a).

¹² *See* AS 43.23.015(a) (“the commissioner shall consider all relevant circumstances in determining the eligibility of an individual.”)

envision that the Ls intend to return and make a home in Alaska.¹³ Since moving they have established a primary residence in Tennessee.¹⁴ The Ls have found work in Tennessee, claimed moving expenses on their taxes, registered to vote, and did vote.¹⁵ These are ties to another state that indicate continued residency in that state and are inconsistent with the intent to remain in Alaska indefinitely.

Because T moved with his family and he was a minor on the date of application, his residency is presumed to be that of his parents.

Children generally derive their intent to live in Alaska, and thus their residency, through their parents. This does not mean the child will always be a resident of the same place as his parent, but rather that the parent forms the child's intent for him because the minor lacks the legal capacity to form intent.¹⁶

T's parents severed their Alaska residency. Because T was at all relevant time periods a minor, he lacks the legal capacity to form an intent distinct from his parents' intentions and derives his intent to live in Alaska through his parents. This does not mean that had the facts been different, that he could not have established an intent distinct from that of his parents.¹⁷

Ms. L presented testimony on T's absence being one that would allow him to receive a PFD. She failed to present testimony or other forms of evidence to establish that she and Mr. L intended for T to return to Alaska and make a home or to live in Alaska had he not gone to school. The evidence presented at the hearing did not meet the burden of proving their intent for T was, more likely true than not true, that he remained an Alaska resident.¹⁸

The Department of Revenue's regulations provide that a substitute sponsor is appropriate if the minor child "meets all eligibility requirements but does not have an eligible sponsor on file

¹³ Testimony of P. L and T. L.

¹⁴ 15 AAC 23.143(d)(1).

¹⁵ 15 AAC 23.143(d)(4), (10), (12). These actions are typically inconsistent with maintaining Alaska residency and will make the actor ineligible for a PFD.

¹⁶ *In re C., C. & B. W.*, Dep't of Revenue Caseload No. 030690 at 3 (2004) (Recognizing that where parent did not intend to move to Alaska until 2002, but parent sent children to live in Alaska in 2001, the parent's intent for the children was that they be present in Alaska with the intent to remain indefinitely.)

¹⁷ It is noted that T's Education Verification Form indicates he pay out of state tuition. Many institutions require the individual have been living in the state for a set period of time before they may obtain instate tuition. T moved to Tennessee in the Fall 2010. It would be of some persuasive value if Ms. L established that T was eligible for instate tuition but had turned it down.

¹⁸ 15 AAC 05.030(h).

with the department”¹⁹ Because T does not meet all eligibility requirements, the division may not accept a substitute sponsor.

IV. Conclusion

T L is ineligible for a 2011 PFD. Therefore, the decision of the division to deny T L’s 2011 Child Application is affirmed.

DATED this 29th day of September, 2011.

By: Signed
Rebecca L. Pauli
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 3rd day of November, 2011.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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

¹⁹ 15 AAC 23.113(1); *In re B. & R.A.*, OAH No. 05-05489 (2006).