

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

In the Matter of:	)	
	)	
S M, individually,	)	
and <i>ex rel.</i> L and C C	)	OAH No. 11-0394-PFD
_____	)	DOR Nos. 2011-049-0659/0689

**DECISION and ORDER**

**I. Introduction**

S M filed timely applications for 2011 Alaska Permanent Fund dividends for herself and her minor children, L and C C. The Permanent Fund Dividend Division denied the applications on the grounds that Ms. M (1) was not a resident of Alaska, and (2) had maintained her principal home outside of Alaska. Ms. M filed an appeal, and the assigned administrative law judge conducted a telephonic hearing at which Ms. M testified.

Because the preponderance of the evidence in the record indicates that Ms. M maintained her status as an Alaska resident through the date of application, she did not maintain her principal home in another state, and her absence to obtain medical treatment is consistent with the intent to remain a resident of Alaska, her application and those of her children are granted.

**II. Facts**

S M and her two children, then aged 9 and 12, moved from Boise, Idaho, to No Name in September, 2008, intending to remain indefinitely. In No Name, Ms. M worked as a dental assistant at the No Name Alaska Regional Health Clinic. No Name was at the time her mother's residence; her mother has lived in Alaska since 1999.

In October, 2010, Ms. M was medivaced to Seattle for treatment of pancreatic cancer. She returned to Alaska on January 24, 2011, and resumed working. However, Ms. M's course of treatment requires recurring medical sessions (not available in No Name) every six or seven weeks. In order to be able to obtain those treatments without undue travel expense, Ms. M moved back to Idaho, where she has relatives, in March, 2011. In Idaho, Ms. M lives in her uncle's home with her two children, while receiving regular medical care at a cancer treatment facility in Utah every six or seven weeks, with regular checkups with an oncologist in Boise.

Ms. M intends to return to Alaska with her children when her cancer treatment has been completed.<sup>1</sup>

### **III. Discussion**

The Division denied the applications on the grounds that Ms. M (1) was not a resident of Alaska, and (2) had maintained her principal home outside the state. On appeal, Division maintains these grounds,<sup>2</sup> and asserts that, in addition, Ms. M is ineligible for a dividend because (3) she was absent for more than the time allowed by law.<sup>3</sup>

#### **A. Ms. M's Absence Is Not Inconsistent With Residence**

The Division has not disputed that before she left Alaska in the fall of 2010 to obtain medical treatment, Ms. M was an Alaska resident. The residence of an Alaska resident who is absent from the state is determined in accordance with AS 01.10.055(c), which provides:

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under make a home in the state.

In this case, there is no evidence that Ms. M has established or claimed residence in Idaho. Thus, her status as an Alaska resident depends on whether she (1) has performed acts or (2) is absent under circumstances, that are inconsistent with the intent to return to Alaska and remain indefinitely.

The Division contends that Ms. M has performed acts and is absent under circumstances that are inconsistent with the intent to return based on a prior case, In Re G. & E. L. M.<sup>4</sup> In that case, the applicants had left for an indefinite period, with no identified termination point, for unexplained “medical reasons associated with Mr. M.’s health.”<sup>5</sup> But unlike the applicant in the prior case, Ms. M is not absent for a period with no identified termination point, for unexplained medical reasons. She is absent in order to obtain treatment that was unavailable in No Name, for the length of time that her cancer treatments continue. The timing of her return is contingent on the length of her course of treatment, a date that is at present unknown but that is expected to

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<sup>1</sup> Testimony of S. M.

<sup>2</sup> Position Statement at 3-4.

<sup>3</sup> Position Statement at 4-5.

<sup>4</sup> Position Statement at 3, *citing* In Re G.&E. L. M., OAH No. 09-0498-PFD (Commissioner of Revenue 2009).

<sup>5</sup> *Id.*

occur within an identifiable period of time. As is explained in the prior case referenced by the Division, such an absence is not inconsistent with the intent to return to Alaska and remain indefinitely.<sup>6</sup>

B. Ms. M Does Not Maintain A Principal Home In Idaho

The Division argues that Ms. M is ineligible for the 2011 dividend because prior to filing her application she maintained her principal home in Idaho, noting, in particular, that Ms. M had allegedly transported all of her household goods from No Name to Idaho, rather than placing them in storage.<sup>7</sup> Evidence relating to the location of a person's household goods is relevant (but not dispositive) to the determination of the location of that person's principal home.<sup>8</sup> In this case there is no evidence that Ms. M had any substantial amount of household goods when she was living in No Name, let alone that she brought them with her to Idaho. Ms. M is essentially boarding with her uncle for a lengthy, but temporary, period while undergoing medical treatment. The premises where she is living is her uncle's principal home, not hers.

C. Ms. M Was Not Absent For More Than The Time Allowed

In addition to Alaska residency, required by AS 43.23.005(a)(2) and (3), AS 43.23.005(a)(6) requires that the applicant was absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). On appeal, the Division asserts that Ms. M is ineligible because she was absent from Alaska during the qualifying year (2010) for more than the time allowed by AS 43.23.008(a)(17).<sup>9</sup>

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<sup>6</sup> “[P]ersons who intend to return to Alaska to remain and make their homes can be expected to have at least a general sense of when they will return, or have their returns contingent on events that can reasonably be expected to occur within an identifiable period of time such as graduation from college.” *Id.* Cf. In Re J.R.W., OAH No. 09-0669-PFD, at 3 (Commissioner of Revenue 2010 (anticipated absence of one year to obtain treatment medical treatment is not inconsistent with the intent to return to Alaska indefinitely).

<sup>7</sup> See Position Statement at 4, citing In Re G.&E. L. M., OAH No. 09-0498-PFD, at 3 (Commissioner of Revenue 2009). This case did consider the location of the applicants' household goods for purposes of determining whether they had maintained a principal home in another state. Rather, it considered those facts in the context of determining whether the applicants had demonstrated an intent to “to remain indefinitely in a place other than Alaska.” *Id.* For this reason, the case would be of limited persuasiveness in the context of this case, even if the underlying facts regarding the location of household goods were identical.

<sup>8</sup> See, e.g., In Re L. M., at 4, OAH No. 10-0065-PFD (Commissioner of Revenue 2010) (“while having the military move one's household goods is evidence of the intent to maintain a principal home [in another state], it is not sufficient to outweigh the other evidence in this case.”); In Re K.G., at 4, OAH No. 09-0257-PFD (Commissioner of Revenue 2009) (no legal requirement that a person must store household goods in Alaska during an absence to qualify for a dividend); In Re W. & K. C., at 2-3, OAH No. 06-0352-PFD (Commissioner of Revenue 2006 (applicants living in Alaska sold most of their belongings and stored the rest in a friend's garage before temporarily relocating to California; principal home was in California).

<sup>9</sup> Position Statement, pp. 4-5.

AS 43.23.008(a)(17) provides that a resident remains eligible if absent for any reason for a period of no more than 180 days, so long as the reason for the absence is consistent with the intent to remain a resident. The Division's argument with respect to AS 43.23.008(a)(17) is thus identical to its argument with respect to residence: that Ms. M's absence is inconsistent with the intent to remain a resident. As previously stated, that argument fails.

#### **IV. Conclusion**

S M was absent from Alaska in 2010 for less than 180 days, for the purpose of obtaining medical treatment. She has shown, by a preponderance of the evidence, that she retains the intent to return to Alaska and remain indefinitely. While absent she is living in her uncle's home, which is not her principal home. She is eligible for the 2011 Alaska Permanent Fund dividend. Because her children's eligibility is dependent on her own,<sup>10</sup> L and C C are also eligible.

#### **V. Order**

The applications of S M and L and C C for the 2011 Alaska Permanent Fund dividend are GRANTED.

DATED January 25, 2012

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>10</sup> See AS 43.23.008(a)(13).

**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  
Andrew M. Hemenway  
Name  
Administrative Law Judge  
Title

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