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

In the Matter of :	)	
	)	
T and E C,	)	
individually and *ex rel.*	)	
H M and G C	)	OAH No. 11-0404-PFD
	)	DOR Nos. 2011-019-6209/6770/7021;
2011 Alaska Permanent Fund dividend	)	2011-021-6190

DECISION and ORDER

I. Introduction

T and E C filed timely applications for 2011 Alaska Permanent Fund dividends for themselves and Ms. C's children, H M and G C. The Permanent Fund Division denied the applications based on the presumption of non-residency that attaches to a person who is absent under AS 43.23.008 for more than five consecutive years.[1] The Cs filed timely appeals and the assigned administrative law judge conducted a telephonic hearing. The Cs represented themselves, and Pete Scott represented the division.

Because Ms. C and her family maintained the intent to return to Alaska and remain indefinitely throughout their absence from the state, their applications are granted.

II. Facts

T (R) C was born in Fairbanks in 1973.[2] She is an Alaska Native (Inupiat) and an enrolled shareholder of the NANA Corporation.[3] She has many close and extended family members in Alaska.[4] When Ms. C was about three years old, Ms. C moved with her family from their home in No Name to Wisconsin, her father's home state.[5] Ms. C continued to live in Wisconsin until, at the age of 18 in 1992, she enlisted in the United States Air Force and in 1993, at her request, was stationed in Alaska.[6] She remained stationed in Alaska until 1998, when she

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1 15 AAC 23.163(f). Ms. C's application was denied for this reason alone. Ex. 6, p. 1. Mr. C's was denied for that reason and, with the children's, because if Ms. C is ineligible then they are ineligible. Ex. 6, pp. 5-6, 11,13.

2 Ex. 10, p. 1.

3 Ex. 7, p. 2; Ex. 10, p. 5.

4 Testimony of T. C; Ex. 10, p. 5.

5 Testimony of T. C. Ms. C was born in December, 1973; she testified that the move occurred "shortly after" her sister was born in November, 1976.

6 Testimony of T. C. *See* Ex. 7, p. 7 (assignment to Alaska starting February 24, 1993).

was stationed to duty at a base in Texas.[7] From there, Ms. C was temporarily assigned to duty in Korea,[8] but she was again stationed in Alaska from September, 2002, until August, 2005, except for a six month deployment abroad.[9] In August, 2005, she was stationed to duty in New Mexico.[10] From there she was deployed to Kirghizstan for about four months in 2007-2008,[11] and to Iraq for six months in 2008-2009.[12] She was again temporarily assigned to duty in Korea, from June, 2010, through June, 2011, when she returned to her duty station in New Mexico.[13]

While she was stationed in Alaska, in August, 2005, Ms. C married E C, a former member of the United States Air Force whom she had met in 2000.[14] Mr. C, who is from Ohio, had first come to Alaska under military orders in 2002 after he requested to be stationed there.[15] He was stationed there through May, 2005, when he was discharged from the military.[16] The couple has a child, G, born in 2006; Ms. C has another child, H, born in 1994, from a former marriage who lives with them.

Since 2005, the C family has lived in New Mexico, where Ms. C is stationed, although Ms. C was for a period away from her family while deployed in Kirghizstan and Iraq and while stationed in Korea. Because it was cheaper to buy a house than to rent, the couple bought a house after Ms. C was stationed in New Mexico.[17] Ms. C is entitled to 30 days of leave per year. In the last five years, the Cs have visited Alaska twice with their children, in the summer of 2007 and 2009, for a total of 26 days.[18] During that time, while stationed in Korea without her family, she took 18 days leave to visit them in New Mexico; in addition, the Cs have twice visited Ohio, where Mr. C is from, for a total of 16 days, and have twice visited Wisconsin, where Ms. C has many relatives on her father's side, for a total of 14 days.[19] They also visited Mexico once, for a week.[20]

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7 Ex. 13, p. 1.
8 Ex. 13, p. 5.
9 *Id.*; Ex. 13, p. 3.
10 Ex. 10, p. 5.
11 Testimony of T. C; Ex. 7, p. 8.
12 Ex. 2, p. 3; Ex. 7, p. 8.
13 *See* Ex. 7, pp. 2, 7-8.
14 Testimony of E. C; Ex. 10, pp. 1-2, 5.
15 Testimony of E. C.
16 Ex. 4, p. 10.
17 Testimony of E. C.
18 Ex. 5; Ex. 11.
19 Testimony of T. C.
20 Testimony of T. C.

Ms. C plans on retiring from the military with 20 years of service in 2013.[21] She believes it is important to raise her children in Alaska, where they will be close to their Alaska Native ancestral and cultural roots.[22] Upon her retirement, the couple plan to return to Alaska and remain indefinitely.[23]

III. Discussion

The Division has not disputed that through the end of the qualifying year for the 2010 dividend, that is, through at least December 31, 2009, T and E C were both Alaska residents. In determining that they are no longer residents, the division relied on 15 AAC 23.163(f), which provides:

> (f) An individual whose absence or combination of absences, under [AS 43.23.008(a)(3)] totals more than five consecutive years is presumed not to have the intent to return to Alaska and remain indefinitely in Alaska. In such a case, the individual is not eligible for a dividend payment unless the individual…demonstrates…an intent at all times during the absence or absences to return to Alaska and remain indefinitely in Alaska.

While this presumption is mandatory, it is rebuttable.[24] In determining whether an individual has overcome the presumption, the division considers seven factors listed in 15 AAC 23.163(g)(1)-(7).[25] In considering those factors (and with specific applicability to 15 AAC 23.163(g)(2)), another regulation, 15 AAC 23.163(h)(1), requires the division to give greater weight to the claim of an individual who makes frequent voluntary trips to Alaska than one who does not. In addition, 15 AAC 23.163(h)(2) provides that the department will generally consider that an individual who has not been present at least 30 days in the past five years has not rebutted the presumption (unless unavoidable circumstances prevented the return).[26]

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[21] Ms. C testified that her enlistment will end in March, 2013, but that she is required to serve at least two years at her most recent pay grade, through December, 2013. She has not yet fixed a precise retirement date.

[22] Testimony of T. C.

[23] Testimony of T. and E. C.

[24] Harrod v. State, Department of Revenue, ___ P.3d ___, ___, Op. 6582 at 12 and n. 28 (Alaska Supreme Court, July 22, 2011) ("…15 AAC 23.163(f) creates a rebuttable presumption that service members who have not returned to Alaska are no longer residents for PFD purposes."). *See also, e.g.*, In Re S.R.B., at 2, OAH No. 09-0440-PFD (Commissioner of Revenue 2009) ("This presumption is rebuttable.").

[25] 15 AAC 23.163(g) ("When considering whether an individual who has been absent for more than five years has rebutted the presumption that the individual does not have the intent to return to Alaska and remain indefinitely in Alaska, the department will consider one or more of [the factors stated in 15 AAC 23.163(1)-(7)], as applicable.").

[26] 15 AAC 23.163(h) states:

> When considering whether an individual who has been absent for more than five years has rebutted the presumption that the individual does not have the intent to return to Alaska and remain indefinitely in Alaska,

The manner in which 15 AAC 23.163(h) has been applied in prior decisions issued by the commissioner is not entirely without inconsistency. Some decisions suggest that the burden of proof in cases involving 15 AAC 23.163(h) is different, that is to say, weightier, than the burden of proof in other cases involving proof of residency,[27] while others treat the burden of proof as by a preponderance.[28] Some suggest that if an applicant has failed to return for at least 30 days, and that failure is not excused due to unavoidable circumstances, there is no need to review the seven factors identified in 15 AAC 23.163(g),[29] while other consider all of the factors even though the failure to return is unexcused.[30]

Notwithstanding any implication to the contrary in prior decisions, 15 AAC 23.163(h) does not change the applicant's burden of proof on appeal, which is to show by a preponderance of the evidence that the applicant has maintained the intent to return to Alaska and remain indefinitely;[31] moreover, even when the applicant's failure to return for more than 30 days is not due to unavoidable circumstances, all of the applicable factors must be considered.[32]

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(1) the department will give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not;

(2) the department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department's satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.

[27] *See, e.g.*, In Re C. & K. Z, *et al.*, at 5, OAH No. 10-0450-PFD (Commissioner of Revenue 2010) ("…[T]he burden of proof required to rebut this presumption is different than the burden of proof required to prove continuing state residency…"); In Re P.O., *et al.*, at 6, OAH No. 10-0444-PFD (Commissioner of Revenue 2010) (applicants "have not established by clear and convincing evidence that they did have the requisite intent"); In Re M. & A. R., at 3, OAH No. 06-0228-PFD (Commissioner of Revenue 2006) ("It is a rare case when an applicant will be able to present such overwhelming evidence of intent to return to Alaska that the general rule should not be followed").

[28] *See, e.g.*, In Re T.& D. G., at 3, OAH No. 11-0349-PFD (Commissioner of Revenue 2012); In Re A.K., at 2, OAH No. 11-0326-PFD (Commissioner of Revenue 2011); In Re S.W.A., at 4, OAH No. 07-0690-PFD (Commissioner of Revenue 2008);.

[29] *See, e.g.*, In Re C. & K. Z, *et al.*, at 3, OAH No. 10-0450-PFD (Commissioner of Revenue 2010) ("Only if an applicant can show that unavoidable circumstances prevented him from returning for at least 30 days does the Division then look at the other factors to determine whether the applicant has the required intent to remain in Alaska indefinitely."); In Re D.E.B, at 2, OAH No. 09-0437-PFD (Commissioner of Revenue 2010) ("If unavoidable circumstances are not shown…, then the individual has not met the burden of proof and has not rebutted the presumption [of non-residence]."); In Re S.A., at 3, OAH No. 09-0421-PFD (Commissioner of Revenue 2010).

[30] *See, e.g.*, In Re S.& P. R., at 3, OAH No. 10-0022 (Commissioner of Revenue 2010); In Re S.R.B., at 3-4, OAH No. 09-0440-PFD (Commissioner of Revenue 2010); In Re K.A.P., at 5-6, OAH No. 09-0274-PFD (Commissioner of Revenue 2009); In Re E. & W. M., at 3-6, OAH No. 09-0003-PFD (Commissioner of Revenue 2009).

[31] 2 AAC 64.290(e). *See* 15 AAC 05.030(h); 15 AAC 23.173(i); *cf.* Evidence Rule 301 and Commentary.

[32] *See* note 24, *supra*; *cf.* Harrod v. State, Department of Revenue, ___ P.3d ___, Op. 6582 at 12, note 28 (Alaska Supreme Court, July 22, 2011) ("15 AAC 23.163(g) and (h) specify the factors DOR shall consider, and the weight to be given to the factors, when deciding whether an individual…has rebutted this presumption." [emphasis

While the burden of proof remains by a preponderance of the evidence, there is a rebuttable presumption that an individual who has been absent for five consecutive years has lost the intent to return.[33] In considering whether that presumption has been overcome, presence in Alaska for less than 30 days in five years is given significant weight, because "the department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years [absent unavoidable circumstances] has not rebutted the presumption."[34] It may be that the division initially denies the applications of most individuals who fail to return for at least 30 days, thus effectively implementing the general rule. But whatever the division's practice may be, whether the general rule should be applied in a particular case on appeal depends on the specific facts of the matter as determined based on the preponderance of the evidence at the hearing, considering all of the applicable factors, while giving significant weight to the failure to return for at least 30 days.

The factors to be considered, the evidence and the facts relating to those factors, and their applicability and weight in this particular case may be summarized as follows:

(1) Length of Absence Compared to Presence

15 AAC 23.163(g)(1) provides for consideration of "the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence." Because the reference to an "absence" in subsection (g)(1) repeats the reference to an "absence" earlier in the regulation, the "absence" to be considered is the absence of five or more consecutive years that leads to the presumption that the intent to return no longer exists.[35] How "the time the individual spent in Alaska before departing on the absence" should be calculated is not so easily determined. The relevant period of time might be considered to be: (1) the time the individual spent in the state immediately preceding the absence; or (2) all of the time the individual spent in the state before the absence. For a person who, like Ms. C, was present in the state for lengthy but discontinuous periods of time, the latter approach more accurately reflects the relative significance of a prolonged absence of five years.

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added]). *See also*, Anderson v. State, Department of Revenue, 26 P.3d 1106, 1109, 1112 (Alaska 2001) (prior to adoption of 15 AAC 23.163(h)(2), "regulations required that the department consider six factors to determine whether an individual has rebutted the presumption of ineligibility" [emphasis added]).

[33] 15 AAC 23.163(f).

[34] 15 AAC 23.163(h)(2).

[35] The division's calculation includes periods of absence before the five-year absence began. *See* Position Statement, p. 3. This has the effect of overstating the period of absence.

In Ms. C's case, her absence began in August, 2005, and continued (for purposes of this appeal) through the date her application was complete in February, 2011,[36] and thus totaled about five and a half years. The length of time that Ms. C spent in Alaska immediately preceding the absence was a scant 146 days, but the total length of time she has spent in Alaska, including her three childhood years, is about eleven years, and without including those childhood years is about eight years.[37]

Prior decisions suggest that this factor will generally be considered to support overcoming the presumption if the length of presence immediately prior to the absence is greater than the length of the absence.[38] A slightly greater period of absence has been deemed neutral, or mildly unfavorable,[39] while a significant disparity has generally been considered unfavorable to the applicant.[40] However, other facts, such as prior periods of presence in Alaska, have on occasion been deemed to warrant concluding that this factor supports overcoming the presumption even if the length of absence exceeds the immediately preceding period of presence by a relatively substantial amount.[41]

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[36] The Cs submitted supplemental information in support of their applications in response to a request from the division; the information was received by the division on February 7, 2011. Ex. 3.

[37] The division's calculation, prepared before the hearing at which evidence was taken to establish the length of time Ms. C was in Alaska as a child, omits that period of time. *See,* Position Statement, p. 3.

[38] *See, e.g.*, In Re T. & D. G., at 4, OAH No. 11-0349-PFD (Commissioner of Revenue) ("The length of absence has exceeded the time spend in Alaska. This factor weighs against [overcoming the presumption].").

[39] *See, e.g.*, In ReJ. & M. P., at 5, OAH No. 11-0353-PFD (Commissioner of Revenue2011) (present slightly less than five years, absent for more than five years; "This factor weighs against a finding of continued intent to return."); In Re S. B, at 2, OAH No. 11-0281-PFD (Commissioner of Revenue 2011) (present 6 years, absent 8 years; "relative length of absence…is not unusually large. This factor is neutral."); In Re P.O., et al., at 4, OAH No. 10-0444-PFD (Commissioner of Revenue 2010) (present four and one half years, absent five and one half; this "slightly undermines the strength of their connection to Alaska").

[40] *See, e.g,* In Re. E.& W. M., at 3, OAH No. 09-0003 (Commissioner of Revenue 2009) (presence of less than three years "compares unfavorably" to absence of seven years). However, other factors, such as prior periods of presence in Alaska, may warrant concluding that this factor supports overcoming the presumption even if the length of absence exceeds the immediately preceding period of presence by a relatively substantial period. *See, e.g.*, In Re. A.K., at 2, OAH No. 11-0326-PFD (Commissioner of Revenue 2011) (14-year resident as youth left the state, later returned for four years, and was thereafter absent for seven. Presumption overcome; "absence...is a relatively short period of time as compared with her long-term residence in the state of about 20 years."); In Re S.W.A., at 3, OAH No. 07-0690-PFD (Commissioner of Revenue 2008) (8 years present, 13 years absent; Alaska resident); In Re V.V., *et al.*, OAH No. 07-0104-PFD (Commissioner of Revenue 2007) (present four years, absent twelve; presumption overcome).

[41] *See, e.g.*, In Re. A.K., at 2, OAH No. 11-0326-PFD (Commissioner of Revenue 2011) (14-year resident as youth left the state, later returned for four years, and was thereafter absent for seven. Presumption overcome; "absence...is a relatively short period of time as compared with her long-term residence in the state of about 20 years."); In Re S.W.A., at 3, OAH No. 07-0690-PFD (Commissioner of Revenue 2008) (8 years present, 13 years absent; Alaska resident); In Re V.V., *et al.*, OAH No. 07-0104-PFD (Commissioner of Revenue 2007) (present four years, absent twelve; presumption overcome).

Ms. C's absence since 2005 of about six years is slightly less than length of time she has been in Alaska since 1993, and is substantially less than the length of time she has been in Alaska overall. This factor weighs against the presumption that Ms. C lacks the intent to return and remain indefinitely.

(2) Frequency and Duration of Return Trips

15 AAC 23.163(g)(2) provides for consideration of "the frequency and duration of return trips to Alaska during the absence." This is an important consideration in determining whether an individual has overcome the presumption of lack of intent to return to Alaska and remain indefinitely: more weight is afforded the claim of an individual who makes frequent voluntary returns than to one who does not,[42] and an individual who is physically present in Alaska for less than 30 days during the prior five years is generally considered not to have rebutted the presumption, unless unavoidable circumstances has prevented returning during that period of time.[43]

In the last five years, Ms. C has visited Alaska twice with her husband and their children, in the summer of 2007 and 2009, for a total of 26 days.[44] The duration of their visits indicates that they were not made merely for purposes of meeting eligibility requirements, but rather out of a desire to return for personal reasons.[45] The frequency of the visits, while limited, is not unreasonably so for an out-of-state resident of Alaska, in light of the financial and temporal constraints on such visits for a family of four with limited leave time, a school-age child and extended periods of deployment to a war zone or abroad. Moreover, the Cs visits to Alaska have been substantially longer than their visits to Wisconsin or Ohio, where they also have family members and which are substantially more accessible to them. Nonetheless, because her visits to Alaska total less than 30 days in the last five years, this factor provides significant

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42 15 AAC 163(h)(1).

43 15 AAC 163(h)(2). Ms. C did not argue that her failure to return was due to unavoidable circumstances.

44 Ex. 5; Ex. 11.

45 Visits that do little more than meet the requirement of presence in the state for at least 72 hours every two years are insufficient, in themselves, to overcome the presumption of ineligibility. 15 AAC 23.163(g)(2). Such visits are not persuasive evidence of an intent to return. *See, e.g.*, In Re P.O., V.O., & B. O., at 4, OAH No. 10-0444 (Commissioner of Revenue 2010); In Re K.A.P., at 5, OAH No. 09-0274-PFD (Commissioner of Revenue 2009). Even visits of six to eight days have been considered not of "substantial duration." In Re E. & W.M., at 3, OAH No. 09-0003-PFD (Commissioner of Revenue2009). *See also*, Anderson v. State, Department of Revenue, Permanent Fund Division, 26 P.3d 1106 (Alaska 2001) (dividend denial sustained; applicant visited three times in five years for a total of seven days).

weight in support of the presumption that Ms. C lacks the intent to return and remain indefinitely.

(3) Conditional Intent to Return

15 AAC 23.163(g)(3) provides for consideration of "whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska." Ms. C's intent to return is not conditioned on events outside her control, nor is it subject to the vagaries of future events over a lengthy period of time.[46] Rather, to the contrary, Ms. C and her husband have a definite plan to return within the next three years, upon Ms. C's retirement from the military (such that, for her, economic conditions generally, or finding a job in Alaska, are not significant potential barriers to return). At the same time, the couple's plans are far enough in the future that it is reasonable that at present have not yet taken concrete steps to implement their plan.[47] Both Ms. C and her husband were credible witnesses, and their sworn testimony regarding their unconditional intent to return was persuasive. This factor weighs heavily against the presumption that Ms. C lacks the intent to return and remain indefinitely.

(4) Ties Outside Alaska

15 AAC 23.163(g)(4) calls for consideration of "any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's license, or receipt of benefits under a claim of residency in another state." In this case, Ms. C, with her husband, owns a home in New Mexico, but because purchasing the home was a financial decision, and Ms. C is permitted to maintain her principal residence in New Mexico, this fact is not of particular significance.[48] There is no indication that

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[46] A stated intent to return at a relatively distant date might be considered inherently conditional, in the sense that "it is difficult to predict where life will take a person a decade or two in the future." In Re. E. & W.M., at 3, OAH No. 09-0003-PFD (Commissioner of Revenue 2009). Conversely, a plan to return by a date certain within a relatively close time would not be inherently conditional. *See* In Re J.R., at 3, OAH No. 05-0299-PFD (Commissioner of Revenue 2005) ("While still a few years off, 2008 is within the range of time for which people can reasonably predict their plans...").

[47] The absence of concrete steps to implement a plan to return, when the planned return is relatively imminent, undercuts even credible testimony as to the existence of such a plan. *See* In Re P.O., V.O. & B.O., at 2, 4 (Commissioner of Revenue 2010) (credible testimony of "concrete plan" to return within a year; however, "[h]aving taken essentially no steps to date to arrange employment or apply for college admission in Alaska, the [applicants] have not made a strong showing that their return is wholly certain and unconditional").

[48] *See* 15 AAC 23.143(d)(1)(A). There are many reasons other than an intent to establish residency in another state why a member of the military who is stationed elsewhere for a lengthy period of time might purchase a home rather than renting or living on base housing. That it is cheaper to buy than to rent, as it was for the Cs, is one. *See,*

she pays resident taxes in another state, that she is registered to vote anywhere but in Alaska, that she has registered a vehicle or obtained a driver's license in another state, or that has received benefits under a claim of residence in any other state. In the absence of any showing of any significant ties to another state, this factor is inapplicable.

(5) Assignment Priority

Under 15 AAC 23.163(5), the department considers "the priority the individual gave Alaska on an employment assignment list, such as those used by military personnel." Both Ms. C and Mr. C were initially stationed in Alaska at their own request by means of the "dream sheet" then in use, at least for initial stationing. Ms. C testified that she extended her time in Alaska to the maximum time allowed and was unable to extend it further. The evidence in this case is thus to the effect that Ms. C requested an Alaska posting when provided the opportunity to do so. However, there is no evidence that, during her absence, she has been provided the opportunity to give priority to Alaska as a duty station. In the absence of any showing that Ms. C had the opportunity to request or obtain an Alaska duty station after she was stationed to New Mexico, this factor is inapplicable.[49]

(6) Career Choice

15 AAC 23.163(g)(6) calls for consideration of "whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska."

This factor has obvious implications for individuals who chose a career of military service. Alaska has several major military bases, and, depending on a particular individual's military specialty and rank, a military person, at least in the Army, Air Force and Coast Guard, often will have an opportunity to reside in Alaska at one or more points in their military career. A military career, in short, is generally not a career choice that does not allow the individual to reside in Alaska.[50] A particular career path in the military may effectively eliminate an

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e.g., In Re A. & J. C., at 5, OAH No. 11-0287-PFD (Commissioner of Revenue 2011) (purchase of home did not indicate intent to remain where it was less expensive to buy than to rent).

[49] Whether the regulation reflects current military practice is unknown. *See* In Re E.& W.M., at 4, OAH No. 09-0003-PFD (Commissioner of Revenue 2009) (applicant testified that Army currently provides a list of available postings, rather than a "dream sheet").

[50] *See* In Re P.O., at 5, note 13, OAH No. 10-0444-PFD (Commissioner of Revenue 2010 ("To discriminate against military members because of their 'career choice' would be difficult to square with legislative intent, the legislature having gone out of its way to protect the eligibility of people choosing this career path. *See* AS 43.23.008(a)(3).").

individual's ability to be stationed in Alaska, however,[51] and the choice of such a career path is a factor that may be considered to weigh against a finding of intent to return.[52] In this case, however, Ms. C was on two occasions stationed in Alaska, and the evidence does not establish that her particular career path substantially eliminated her ability to be stationed in Alaska. Absent a showing that Ms. C's own choices have limited her ability to return to reside in Alaska while pursuing a military career, this factor is inapplicable.

(7) Ties to Alaska and Other Factors

Lastly, pursuant to 15 AAC 23.163(g)(7), the department considers "any ties the individual has maintained in Alaska such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent."

The Cs did not own any real estate in Alaska, or have any Alaska business or professional licenses, and to that extent this factor is inapplicable. They have maintained their Alaska voter registration, but paper ties such as that are not particularly significant indicators of intent. However, other factors that tie Ms. C to Alaska are of significance, namely that she was born in the state and has a large number of close and extended family members there,[53] and that, as an Alaska Native, she has cultural ties to Alaska that cannot be replicated elsewhere. In light of those personal ties, this factor weighs heavily against the presumption that Ms. C lacks the intent to return and remain indefinitely.

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[51] *See, e.g*, In Re J. & M. P., at 6, OAH No. 11-0353-PFD (Commissioner of Revenue 2011) ("because of his particular expertise, he is not eligible for an assignment to Alaska"); In Re D.C.S., at 3, OAH No. 11-0103-PFD (Commissioner of Revenue 2011) (submariner; no submarine base in Alaska); In Re P.O., at 5, OAH No. 10-0444-PFD (Commissioner of Revenue 2010) (military person's function transferred to another state, making it impractical to seek an Alaska assignment); In Re S.W.A., at 4, OAH No. 07-0690-PFD (Commissioner of Revenue 2008) (KC-135 pilot; no positions in Alaska).

[52] *See, e.g.*, Wilder v. State, Department of Revenue, Permanent Fund Dividend Division, 929 P.2d 1280 1283 (Alaska 1997) (military member did not request reassignment to Alaska "because to do so would have been 'career damaging'"; concluding, "Wilder has made a choice, and that choice is inconsistent with an intent 'at all times' to return to Alaska.").

[53] That an applicant was born or raised in Alaska and has substantial family connections in the state has been recognized in a number of cases as of substantial significance. *See, e.g.*, In Re A.K., at 4, OAH No. 11-0326-PFD (Commissioner of Revenue 2012) ("In this particular case, it is of primary significance that [the applicant] was raised in Alaska, has multiple close family members here, and is married to an Alaska resident with 'solid ties' [in the division's characterization] to the state."); In Re S.W.A., at 4, OAH No. 07-0690-PFD (Commissioner of Revenue 2008) (applicant had "enduring and deeply personal ties of family deriving from ancestral roots in the state and his mother's continued residency."). Again, however, that fact by itself is not conclusive, and such applicants have been deemed ineligible in light of all of the factors. *See, e.g.*, In Re J.M. & B.M., OAH No. 05-0297-PFD (Commissioner of Revenue 2005).

IV. Conclusion

Apart from the fact that Ms. C has not spent at least 30 days in Alaska during the last five years, none of the relevant factors supports the rebuttable presumption, based on her absence for five consecutive years, that Ms. C lacks the intent to return and remain indefinitely; three factors weigh against that presumption, two of them heavily so. In this particular case, notwithstanding the significant weight afforded to the lack of visits of at least 30 days in the last five years, the preponderance of the evidence as a whole is that Ms. C has maintained her intent to return to Alaska and remain indefinitely throughout her absence, and that she remains an Alaska resident. She is therefore eligible for a 2011 Alaska Permanent Fund dividend. Because there is no evidence that Mr. C plans to remain in New Mexico without his family after his wife retires, the preponderance of the evidence is that he, too, intends to return to Alaska and remain indefinitely after she retires. Because both Mr. C and Ms. C are eligible, her children are as well.

V. Order

1. The division's denial of the applications of T and E C, and of H M and G C, for a 2011 Alaska Permanent Fund dividend is **REVERSED**.

2. T and E C, and H M and G C, shall be paid a 2011 Alaska Permanent Fund dividend.

DATED February 22, 2012.

Signed
Andrew M. Hemenway
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 23rd day of March, 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.]