

In addition to their home in No Name, the Ms also owned a home on the No Name River. While not on the road system, this home has “electrical power, running water, hot shower, wood heat stove, propane refrigerator and cook stove, TV and cell phone service.”⁹ They used to consider this their “cabin” but they now think of it as their principal physical home. Upon returning to Alaska for the summer, in addition to spending time at their home on the No Name, it was the Ms’ intent to travel around the state visiting family, friends, and fishing while living in their motor home.

III. Discussion

A. Applicable Law

To be eligible to receive a PFD, an applicant must be an Alaska resident on the date of application¹⁰ and during the entire qualifying year.¹¹ The qualifying year is the calendar year immediately before the year in which a PFD is declared.¹² Once a person has established Alaska residency, they remain a resident unless during the absence they establish or claim residency in another state, perform other acts or are absent under circumstances that are inconsistent “with the intent to remain in the state indefinitely and to make a home in the state.”¹³

The Ms are long-term Alaska residents, having received a PFD every year since the program’s inception. They were denied the 2011 PFD because the division concluded the Ms had established a principal home in Arizona. Establishing a principal home in another state is an act that is inconsistent with the intent to remain in Alaska indefinitely and make a home in the state.

It is the Ms’ burden to prove that they have not severed their residency by either failing to maintain the intent to remain a resident or by establishing a principal home elsewhere.¹⁴

From December 27, 2010 up through the date of their application, March 7, 2011, the Ms were absent from Alaska on vacation in Arizona.¹⁵ The rules applicable to the PFD program provide that a resident of Alaska may be absent up to 180 days in a qualifying year provided the reason for the absence is consistent with the intent to remain a state resident.

⁹ Exhibit 9, page 3.

¹⁰ AS 43.23.005(a)(2).

¹¹ AS 43.23.005(a)(e).

¹² 15 AAC 23.993(a)(7) & (11).

¹³ AS 01.10.055(a), (c).

¹⁴ 15 AAC 05.030(h).

¹⁵ During 2010, they were allowably absent pursuant to AS 43.23.008(a)(17)(A) which permits up to 180 days of absence for applicants who claim no other allowable absence or who claim a military absence.

The division contends the Ms cannot claim an allowable absence because they maintained their principal home in Arizona – an act inconsistent with the intent to remain a resident. The Ms disagree.

B. The Ms remained Alaska residents for purposes of the PFD.

In its Formal Hearing Position Statement, the division argues that one cannot be an Alaska resident if he or she does not intend to make a principal home in the state.¹⁶ By regulation, Alaska residents who have a principal home in another state or country are not eligible to receive a PFD even if the individual did not spend a majority of his or her time at that home.¹⁷ Residency is a state of mind established by objective acts such as where a person maintains their principal home. This is where the concept of principal home and intent to remain in Alaska indefinitely and make a home overlap. It would be difficult to comprehend how a person could have established a principal home outside of Alaska and maintain the requisite intent.

1. Principal Home

The division argues that this appeal should be focused on a “tangible, physical ‘home’ as referenced in 15 AAC 23.143(d)(1).”¹⁸ However, the division’s focus is misplaced. First, the cited regulation starts off by saying “An individual **is not eligible** for a dividend if . . .”¹⁹ The applicable regulation, 15 AAC 23.143(d), identifies 17 acts generally inconsistent with an intent to maintain residency, such as registering to vote in another state, accepting benefits from another state reserved for residents of that other state, etc.²⁰ These acts do not automatically sever a person’s residency but they will render an individual ineligible for a PFD.

Next, the division reads into 15 AAC 23.143(d)(1) the concept of a tangible, physical home. The regulation simply provides that an individual may not maintain a principal home in another state. It does not require a physical home.

Third, the regulation does not require an applicant maintain a principal home in Alaska. It simply requires the applicant not maintain a principal home elsewhere. On several prior occasions, the division has attempted to interpret the principal home requirement to mean principal home in Alaska. Each time the division’s interpretation has been rejected. The

¹⁶ Position statement at 3.

¹⁷ *Id.*

¹⁸ Position statement at 4.

¹⁹ 15 AAC 23.143(d) (emphasis added).

²⁰ 15 AAC 23.143(d)(11), (12).

Commissioner of Revenue has consistently found that an applicant is not required to have a principal home, and may have no principal home, but still remain an Alaska resident for PFD purposes.²¹ An Alaska resident is “not required to maintain a principal home in Alaska during his absence. He [is] only precluded from establishing a primary home in some other state during this absence.”²² Therefore, the burden is upon the Ms to establish that it is more likely true than not true that they do not maintain a principal home outside of Alaska.

Of course, one way to do this is to prove the Ms maintain their principal home in Alaska, but it is not the only way. The Ms purchased their Arizona home in November of 2010.²³ They sold their No Name home in February of 2011.²⁴ They filed their PFD applications in March of 2011. The division argues that the Arizona home became the Ms’ principal home before they filed for their 2011 PFDs. It is not clear whether the division is asserting it became their principal home in November of 2010, when it was purchased, or in February of 2011, when the No Name home was sold.

The evidence principally²⁵ relied upon by the division to conclude that this Arizona home is the Ms’ principal residence is that they sold their No Name home.²⁶ As noted above, however, there is no requirement that a person have any principal residence when absent.

The Ms presented evidence that they own a home on the No Name River, they have friends and family in Alaska, and have chosen, as many Alaska residents have, to become snowbirds for the winter.²⁷ It does not establish that they have a principal home other than Alaska.

²¹ *In re L.M.*, OAH No. 10-0065-PFD (March 16, 2010); *In re J.R.W.*, OAH No. 09-0669-PFD (Commissioner of Revenue 2010); *In re K.G.*, OAH No. 09-0257-PFD (Commissioner of Revenue 2009).

²² *In re J.R.W.*, OAH No. 09-0669-PFD (Commissioner of Revenue 2010).

²³ Exhibit 7, page 1.

²⁴ Exhibit 3, page 4 (escrow instructions).

²⁵ There is a statement in a telephone log that asserts that the M took their “HHG” (presumably Household Goods) to Arizona. Exh. 2. This double hearsay is not sufficiently persuasive to establish that the Arizona home became their principal residence. Moreover, it would appear that over the years the M’ No Name home likely acquired its own set of household goods. When not on the No Name, they were living in a motor home. It would be reasonable to move those items that would not be needed to their winter residence as a cost savings measure.

²⁶ As argued by the division:

you sold your Alaska residence and purchased an Arizona residence – prior to your “date of application” for the 2011 PFD. These actions demonstrated that you were maintaining your principal home in Arizona and not in Alaska.

Exh. 8 at 2.

²⁷ Exhibit 12.

2. Intent

The division also denied the Ms' applications because it believed they did not have the required intent to remain in Alaska indefinitely.²⁸ This argument is based on the Ms' statement

We came to Alaska also to visit friends and family around the state so made trips to No Name, Homer, Soldovia, Valdez and naturally Kenai for the Sockeye frenzy.^[29]

This statement comes immediately after a description of the Ms' activities in Alaska to prepare to travel to their Yenta home, and their time at that home.³⁰ Read in context, the quoted statement shows very little. The record shows that when the Ms come to Alaska – at least in the summer – they travel to various places in the state. This is no different than any other resident who has time off in the summer. There is no reason to believe that they do not intend to continue as Alaska residents indefinitely. The Ms have met their burden of proof on this issue.

IV. Conclusion

L and S M have homes in Alaska and Arizona. Although a close question, the Ms have met their burden of proving that throughout the qualifying year and the date of application, they remained residents of Alaska. They have met their burden of proving that the home in Arizona is not their principal home, and that they have the required intent to remain and make a home in Alaska such that they have not severed their Alaska residency. Accordingly, they are entitled to receive 2011 PFDs.

Dated this 8th day of February, 2012.

Signed

Rebecca L. Pauli
Administrative Law Judge

²⁸ Position statement at 6.

²⁹ *Id.*

³⁰ Exhibit 12, page 1.

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 6th day of March, 2012.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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