

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

IN THE MATTER OF)	
)	
D S)	Case No. OAH 12-0140-PFD
)	Agency No. 2011-054-7324
<u>2011 Permanent Fund Dividend</u>)	

DECISION

I. INTRODUCTION

D S submitted her application for a 2011 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (Division) denied her application because she had answered “no” to the question of whether she intends to return to Alaska indefinitely. After completing the informal appeal process, Ms. S requested a formal hearing by correspondence. The parties were provided an opportunity to submit additional evidence and argument for consideration. The Division submitted a written position statement. Ms. S supplemented her appeal documents on June 21, 2012.² Ms. S has not established that at all times relevant, she maintained the intent to return to the state to remain indefinitely.

II. FACTS

Ms. S attended college in Washington State.³ She was absent from Alaska for 259 days during 2010 for the purpose of obtaining postsecondary education as a full time student.⁴

She submitted her 2011 PFD application form electronically on March 29, 2011.⁵ In completing her application, Ms. S informed the Division she was absent from Alaska when she filed her application and answered “no” to the question “are you returning to Alaska to remain indefinitely?”⁶ Ms. S also answered “no” to the question asking if she maintained her principal home in Alaska, but then indicated that she lived with her parents in Fairbanks.⁷

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¹ Exhibit 1.
² Exhibit 8.
³ *Id.*
⁴ Exhibit 2, page 1.
⁵ Exhibit 1.
⁶ Exhibit 1, page 2.
⁷ *Id.*

III. DISCUSSION

Alaska law sets out a list of requirements to be eligible to receive a PFD. The three requirements relevant to this case are that the applicant must 1) be a state resident on the date of application; 2) be a state resident during the entire qualifying year; and 3) be present in Alaska during the entire qualifying year unless absent for an allowable reason.⁸ There is no dispute in this case that Ms. S was absent for an allowable reason. During the bulk of her absence, she was receiving postsecondary education on a full time basis.⁹ This is an allowable absence under AS 43.23.008(a)(1). Ms. S's absences from the state during the qualifying year do not make her ineligible to receive a PFD.

Whether Ms. S was a state resident during the entire qualifying year and as of the date of her application is a more difficult question. Not every resident who leaves Alaska to attend college or university retains their Alaska residency.

To be a state resident, one must be “physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.”¹⁰ Once residency is established, a person does not lose his or her state resident status by being absent 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 (a) of this section to remain a resident of this state.^[11]

Ms. S signed her application on March 28, 2011, so the question is whether she was a state resident as of that date. It is her burden to come forward with evidence sufficient to establish by a preponderance of the evidence that she intended to remain in Alaska indefinitely and make a home in Alaska.

There is no evidence in the record that Ms. S affirmatively claimed residency in another state. There are also indicators in the record that Ms. S has attempted to retain her connection to Alaska. She wrote that she has an Alaska driver's license, maintains a bank account in Alaska, and voted in the November 2011 Alaska election.

Conversely, there are indicators in the record that Ms. S had abandoned her Alaska residency at the time she completed her application. First, although not determinative, on her 2011

⁸ AS 43.23.005(a).

⁹ Exhibit 1, page 3.

¹⁰ AS 01.10.055(a).

¹¹ AS 01.10.055(c).

application form, she indicated that she was not returning to Alaska to remain indefinitely. In matters of intent it is important to look at the objective evidence as an indicator of subjective intent.

Here the best objective evidence is found in Ms. S's October 21, 2011 Request for Informal Appeal. As a relevant fact to be considered, Ms. S wrote:

Although I was looking for a job outside of AK, I ultimately decided to return to AK after an unsuccessful job search.^[12]

Also compelling is what she wrote in support of her May 12, 2012 Request for Formal Appeal. There Ms. S wrote that when she completed her application her plans:

were to return to Fairbanks, Alaska for the summer which I did. I worked as a summer intern for No Name in Summer 2011. I was unsure of my plan following the summer as I would be looking for a permanent position after graduating from college. I was unsure about employment possibilities . . . Due to my uncertainty about the availability of permanent work in Fairbanks, I checked "No" to remaining in Alaska. As you can see, the "No" was based on a need to find employment but I was uncertain of where I might find it. A job in Alaska is at the top of my list.^[13]

These statements paint a consistent picture of a typical college student who is unsure of what the future will hold and is willing to go where the work is. These statements also paint a picture of someone who is not intent on returning to Alaska to remain indefinitely.

Two cases from 2009 provide useful guidance. Although they reached opposite conclusions, they highlight factors to be considered when assessing whether a student no longer maintains the subjective intent necessary to maintain residency.

In re M.G.B.,¹⁴ the applicant was also a college student who answered that he did not intend to return to Alaska indefinitely.

His reason for answering "no," which he explained to an eligibility technician who contacted him by telephone, was that he did not know if he would be able to find employment in Alaska following his graduation, so if he were offered a job outside of Alaska, he would take it. He also answered "no" because he knew he would be traveling back and forth from Alaska to New York for college through at least the middle of 2012, so in the short term, he would not be staying in Alaska indefinitely.¹⁵

In holding that the applicant was entitled to a 2009 PFD, the Administrative Law Judge (ALJ) noted that the applicant had simply acknowledged that his employment several years in the

¹² Exhibit 5 at 2.

¹³ Exhibit 7 at 4.

¹⁴ OAH No. 09-0474-PFD (Dept of Revenue 2010).

¹⁵ *In re M.G.B.*, page 2 (internal footnotes omitted).

future was uncertain and found that the applicant had “not applied for work in another state or even made a decision to search for work in another state.”¹⁶

In another similar case which reached the opposite conclusion, the ALJ stated:

During the uncertain period when a young person is thinking about the future and considering moving away from Alaska, that person remains an Alaska resident. Students attending college out of state are often uncertain of what their futures will bring, and it is not uncommon for students to candidly admit that, while they plan to return to Alaska after graduating, they are open-minded about opportunities that might arise elsewhere. So long as their intent remains to return to Alaska upon graduation, open-mindedness about a future elsewhere is not enough to sever Alaska residency. But if a student abandons the intent to return to Alaska, the remaining possibility that the student might yet return upon receiving a satisfactory job offer is not enough to say that the person has maintained the intent at all times to return to Alaska to make a home. This is true regardless of how much the person might love Alaska. Wanting to return and intending to return are not the same.¹⁷

The key difference between these two cases is the mental state of the applicants. In the latter, the applicant remained open to the possibility of a satisfactory job offer in Alaska and, contingent upon a satisfactory offer, the student would return. In the former, the applicant had not even made a decision to look for work in another state. This is not to say that an applicant who floods the market with resumes in multiple states has abandoned the intent to return to Alaska to remain indefinitely. Rather it is a statement that cases such as these are fact dependent and determined on a case by case basis.

The question of fact to be resolved in this matter is whether Ms. S abandoned her intent to return to Alaska indefinitely on or before March 28, 2011. As demonstrated by the latter case, it is not enough for Ms. S to show the intent to return if she could find a job. Because she is appealing the Division’s decision, she has the burden of proof on this question.¹⁸

Resolving this question is more difficult because this is a hearing by correspondence and Ms. S’s testimony was not available in person or by telephone. The record is lacking in evidence regarding her plans to return to Alaska. Based on what is in the written record, however, Ms. S has not met her burden of proving that, as of March 28, 2011, she maintained the intent to return to Alaska indefinitely. Her stated intent was to return to Alaska for a temporary, not indefinite, period of time while she continued her job search. The weight of the evidence is that, as of March 28, 2011, Ms. S had abandoned her Alaska residency.

¹⁶ *Id.* at 4.

¹⁷ *In re M.B.*, OAH No. 09-0130-PFD (Dept of Revenue 2009) at 2, 3.

¹⁸ 15 AAC 05.030(h).

IV. CONCLUSION

Ms. S has not established that it is more likely than not that as of the date of her application she intended to return to the Alaska to make a home and remain indefinitely. For this reason the Division’s decision is affirmed.

DATED this 17th day of September 2012

Signed _____
Rebecca 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 15th day of October, 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.]