

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

In the Matter of:)	
)	
L M. Q)	OAH No. 12-0766-PFD
)	Agency No. 2012-034-1518
<u>2012 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

This case is L M. Q’s appeal of denial of her application for a 2012 Alaska Permanent Fund Dividend (PFD). Ms. Q timely applied for her 2012 PFD. Ms. Q’s application was denied by the Permanent Fund Dividend Division (Division) because she had answered “no” to the question asking whether she intended to return to and remain in Alaska indefinitely. She requested an informal appeal and was again denied. Ms. Q then requested a formal hearing by correspondence.

Administrative Law Judge Mark T. Handley heard the appeal PFD specialist Bethany Chase represented the Division and filed a position paper. Ms. Q did not file a response to the Division’s position paper. The record in this appeal closed on at the end of the hearing.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Ms. Q does not qualify for a 2012 dividend, because she moved from Alaska under circumstances that were inconsistent with the intent to maintain Alaska residency in 2011. Ms. Q therefore lost her Alaska residency and did not reestablish her Alaska residency in time to qualify for a 2012 PFD.

II. Facts

Ms. Q was a resident of Alaska who qualified for the 2011 PFD.¹ Ms. Q was absent from Alaska for less than 180 days during 2011. She left Alaska to apply for college in Oregon in 2011, and decided to move back to Alaska after being gone for about six weeks. At the formal hearing Ms. Q did not dispute that she moved from Alaska in 2011 with no definite plans to move back, and decided to move back later during her absence. Ms. Q returned to Alaska, but she is currently living outside the state. Ms. Q believed that she was eligible for a 2012 PFD despite her move because she was absent less than 180 days in 2011.²

¹ Exhibit 1.
² Recording of Hearing.

In completing her Adult Supplemental Schedule, Ms. Q indicated that she left Alaska on September 28, 2011, that she had not returned, and she answered “no” to question 4B which asks, “are you returning to Alaska to remain indefinitely.”³ Ms. Q indicated on her 2012 PFD application that she “MOVED OUT OF STATE.”⁴

Based on the evidence in the record, I find that during 2011, Ms. Q was living in Oregon under circumstances that were inconsistent with the intent to remain a resident of Alaska.⁵

III. Discussion

To qualify for the 2012 PFD, an applicant must meet the eligibility requirements during all of the 2011, the qualifying year for the 2012 PFD, and through the date of application. That means in order to qualify Ms. Q would have had to have been an Alaska resident during all of her absence, which began, on September 28, 2011, through the date of her application.⁶ To be an Alaska resident, one must not claim residency in the other state, or be absent under circumstance that are inconsistent with the intent required to remain a resident of Alaska during an absence.⁷

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Ms. Q, has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁸ Ms. Q did not show by a preponderance of the evidence that she is eligible to receive her 2012 PFD. Ms. Q admitted that she was absent from Alaska with no definite plans to return when she first moved to Oregon in 2011. The fact that she later decided to move back to Alaska does not mean that she maintained her Alaska residency when she moved to Oregon planning to live there indefinitely.

Ms. Q’s confusion about the PFD eligibility requirements is understandable. It was not the length of Ms. Q’s absence but the undisputed fact that she was absent during the PFD qualifying period without definite plans to return that is inconsistent with the intent to remain an Alaska resident.⁹ In 2011 Ms. Q moved to Oregon. The circumstances of this absence disqualify her from 2012 PFD eligibility even though she later returned to Alaska.

³ Exhibit 1, page 3.

⁴ Exhibit 1, page 2.

⁵ Exhibit 1 & Recording of Hearing.

⁶ Alaska Statute AS 43.23.005(a).

⁷ AS 01.10.055(c).

⁸ Alaska Regulation 15 AAC 05.030(h).

⁹ Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

IV. Conclusion

Ms. Q failed to show by a preponderance of the evidence that she maintained her Alaska residency during her absence from Alaska in 2011. The Division’s decision is upheld. Ms. Q is not eligible to receive the 2012 PFD.

DATED this 27th day of November, 2012.

By: Signed
Mark T. Handley
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 January, 2013.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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