

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

In the Matter of :

K L

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OAH No. 12-0968-PFD
DOR No. 2012-012-6363

DECISION

I. Introduction

K L filed a timely application for a 2012 Alaska Permanent Fund dividend. Following an informal conference, the Permanent Fund Dividend Division denied the application on the grounds that: (1) she did not maintain “the intent to remain an Alaska resident, or return to Alaska to make a home at some point in the future” through the date she filed her application; and (2) she was not a state resident on the date of application.¹ Ms. L filed an appeal, which was referred to the Office of Administrative Hearings and heard on the written record.²

Ms. L has not severed her status a resident of the state as defined in AS 01.01.055(c). Moreover, the preponderance of the evidence is that at all times during the qualifying year and through the date of application she maintained the intent to return to Alaska and remain indefinitely. Therefore, the division’s decision to deny her application is reversed.

II. Facts

K L was born and raised in Alaska. After graduating from high school in 2009, Ms. L enrolled as an undergraduate student at a college in Arizona. She attended college there in the 2009-2010 and 2010-2011 academic years.³ Ms. L applied online for the 2011 dividend while attending college. One of the questions on the online application form asked, “Are you currently absent from or living outside Alaska today?” followed by “If YES, are you returning to Alaska to remain indefinitely?”⁴ Ms. L answered the latter question “No” but when contacted by the division she explained that she understood that question to ask “if she were going back to AK anytime soon.”⁵ She stated that she planned to return to Alaska in May, 2012, after she

¹ Ex. 8, p. 1.

² See Ex. 8, p. 1.

³ See Ex. 4, pp. 2-3; Ex. 3, p. 2.

⁴ Ex. 9, p. 2.

⁵ Ex. 3, p. 4.

graduated.⁶ Her application for the 2011 dividend was approved, and after spending the summer in Alaska, Ms. L continued her education as an undergraduate in Arizona in the fall semester of the 2011-2012 academic year.⁷

Ms. L filed her application for the 2012 dividend online, on January 9, 2012.⁸ One of the questions on the online application was this: “Are you currently absent from or living outside of Alaska today?”⁹ The next question asked, “If YES, are you planning to return to Alaska to stay and make a home at some point in the future?”¹⁰ Ms. L answered that question “No,” providing the written explanation “living in Arizona after I graduate college,” which she then anticipated would be in December, 2012.¹¹

As it successfully had with respect to her 2011 application, the division attempted to contact Ms. L for an explanation of her “No” answer on the application form, regarding her return to Alaska.¹² After several unsuccessful attempts to contact her, the division denied her application for the 2012 dividend.¹³

In July, 2012, Ms. L filed an appeal, asserting that she had answered “No” to the question regarding return to Alaska because at the time she filed the application she had planned on remaining in Arizona to attend graduate school before returning to Alaska (other than vacations) “indefinitely.”¹⁴ Subsequently, in November, 2012, she explained that rather than enrolling in graduate school, had decided to extend her undergraduate studies in order to obtain a degree more suitable to her plan to teach English abroad for a few years.¹⁵ After spending a few years teaching abroad, Ms. L intends to return to Alaska to make her home there and remain indefinitely.¹⁶

⁶ Ex. 3, p. 4.
⁷ See Ex. 1, pp. 2, 4; Ex. 5.
⁸ Ex. 1, pp. 1-3.
⁹ Ex. 9, p. 1.
¹⁰ Ex. 9, p. 1.
¹¹ Ex. 1, p. 3; Ex. 5.
¹² Ex. 1, p. 4.
¹³ Ex. 1, p. 4; Ex. 6, p. 1.
¹⁴ Ex. 7, p. 2.
¹⁵ Ex. 8B, pp. 2-3.
¹⁶ Ex. 8B, pp. 2-3.

III. Discussion

Only a state resident throughout the qualifying year and on the date of application may be eligible for an Alaska Permanent Fund dividend.¹⁷ A state resident, for purposes of the dividend program, is defined in AS 43.23.095(7) to mean:

an individual who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055, or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely under the requirements of AS 01.10.055.^[18]

In this case, it is undisputed that Ms. L was a state resident before she departed for college. At issue is her status as a state resident during the qualifying year (2011) and through the date she applied for the 2012 dividend, January 9, 2012. For much of the qualifying year, and through the date she applied, Ms. L was not physically in the state, and therefore her status depends on whether during those times she intended “to return to the state and remain indefinitely under the requirements of AS 01.10.055.”

AS 01.10.055 states:

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

...

(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...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.

Under AS 01.10.055(c), a person severs residence in Alaska if the person: (1) establishes residency in another state; (2) claims residency in another state; or (3) performs other acts or is absent under circumstances that are inconsistent with the intent to return to the state, to remain there indefinitely and to make a home there. If a person severs residence in Alaska, the person does not intend to return and remain indefinitely “under the requirements of AS 01.10.055” and is therefore not a state resident for purposes of the dividend program, as defined in AS 43.23.095(7). In this case, the clear preponderance of the evidence is that Ms. L has not severed her status as an Alaska resident under AS 01.10.055(c): she has not established or claimed

¹⁷ AS 43.23.005(a)(2), (3).

¹⁸ AS 43.23.095(7).

residence in Arizona, and there is nothing about her actions or circumstances that is inconsistent with the intent to return to Alaska, remain indefinitely, and make a home there.

However, that a person absent from the state has not severed their status as a resident of Alaska as defined in AS 01.10.055 does not necessarily mean that the person is a “state resident” as defined in AS 43.23.095(7). In particular, to retain status as a resident of Alaska as defined in AS 01.10.055, it is enough (absent establishing or claiming residence elsewhere) that an absent person’s actions and circumstances are consistent with the intent to return to Alaska to remain indefinitely; however, to retain status as a state resident as defined in AS 43.23.095(7), an absent person must actually maintain the intent to return to Alaska to remain indefinitely.

In effect, for an absent person, the difference between maintaining status as a resident of Alaska as defined in AS 01.10.055 and maintaining status as a state resident as defined in AS 43.23.095(7) is equivalent to the difference between using an objective test and or a subjective test to determine the absent person’s mental state. That is to say, under AS 01.10.055(c) an absent person maintains status as a resident of Alaska if the person’s objective actions and circumstances are consistent with the intent to return and remain indefinitely. Under AS 43.23.095(7), by contrast, it is the absent person’s actual subjective mental state that is determinative. Thus, in this case, the question is not what most absent persons’ state of mind would be, given the observed actions and circumstances, but rather what K L’s actual intent was.

In concluding that Ms. L lacked the intent to return to Alaska and remain indefinitely, the division relies entirely upon Ms. L’s direct answer to a specific question on the 2012 application. In the division’s view, Ms. L’s subsequent explanations for her answer are unpersuasive, because she had given a similar answer in her 2011 application. The wording of the question had been changed by the division precisely to avoid the type of misunderstanding that had occurred in connection with the 2011 application, and in the division’s view that change, coupled with Ms. L’s prior exposure to the issue, makes it difficult to believe that she made the same mistake in connection with the 2012 application.

The question on the 2012 online application was this: “[A]re you planning to return to Alaska to stay and make a home at some point in the future?”¹⁹ The statutory requirement, however, is that the absent person must have an “intent”, not a “plan.” That a person has a

¹⁹ Ex. 9, p. 1.

definite plan to return is evidence that the person has the actual intent to return, but the absence of a definite plan is not conclusive evidence of the lack of intent to return. Moreover, even as reworded, the question is not without ambiguity: one might read it as an inquiry as to the existence of a specific, definite plan, as compared with a general, indefinite intent. In that light, and in light of her subsequent explanations, Ms. L's assertion that she was not "planning" to return is entirely plausible. A lifelong resident of Alaska, while attending college as an undergraduate, might well intend to return to Alaska at some time after graduation to remain indefinitely, without having any definite plan to put that intention into effect and while at the same time having a definite plan to spend a few years after graduation outside the state before settling down back in Alaska.

At some point, one might reasonably expect a person who genuinely intends to return to develop a specific plan for doing so,²⁰ and persons who embark on lengthy post-graduation absences for work, recreation, travel or other pursuits will be disqualified from eligibility without regard to their status as residents.²¹ However, this case involves a lifelong Alaskan, still an undergraduate, who has returned to the state every summer and whose immediate family resides in the state, and who has, so far as the record indicates, never held permanent employment in another state, never impermissibly maintained a principal home in another state, never been absent for more than the time allowed by law, and never developed any meaningful ties to any other state than Alaska. There is no evidence that she has at any time made an affirmative decision not to return to Alaska and make a home there; the only evidence is to the effect that the timing of her return is uncertain. To conclude that Ms. L did not intend to return would in effect give conclusive effect to Ms. L's answer to the question on the application form, disregarding the surrounding circumstances.

While it is plausible that Ms. L's experience regarding a similar question in 2011 should have inoculated her from future error, one might easily take the exact opposite view: some people learn from mistakes; others repeat them. Either view is speculative. It bears notice, however, that in 2011, so far as the record indicates, the division did not explain to Ms. L that the correct answer for her to have given would have been "yes"; it is plausible that in 2012 Ms. L believed that the appropriate response was "no", coupled with an explanation (as she provided).

²⁰ See generally, 15 AAC 23.163.

²¹ See generally, AS 43.23.008; 15 AAC 23.143(d).

After all, from Ms. L's perspective, that was what had occurred in 2011, and she was paid that dividend. In the administrative law judge's view, notwithstanding her negative answer to the question, "are you planning to return to Alaska to make a home at some point in the future," the preponderance of the evidence in this case is that K L maintained the intent to return to Alaska and make a home in the state throughout 2011, and on January 9, 2012, and that in responding as she did she did not mean to disclaim the intent to return to Alaska and remain indefinitely. Rather, she meant to communicate that she did not have a specific plan in mind for her return.

IV. Conclusion

The division's denial of the application of K L for 2012 Alaska Permanent Fund dividend is **REVERSED**. The application of K L for a 2012 Alaska Permanent Fund dividend is **GRANTED**.

DATED April 4, 2013

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 8th day of May, 2013.

By: *Signed* _____
Signature
Andrew M. Hemenway _____
Name
Administrative Law Judge _____
Title

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