

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

IN THE MATTER OF)	
B J)	Case No. OAH 12-0984-PFD
)	Agency Case No. 2012-034-2973
<u>2012 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

This case is B J's appeal of the division's determination that he is disqualified from eligibility for a 2012 PFD because he filed a petition for dissolution of marriage California, claiming that he was a resident of that state in 2011. Mr. J filed an application for a 2012 permanent fund dividend (PFD). The Permanent Fund Dividend Division (division) determined that Mr. J was not eligible, and it denied the application initially and at the informal appeal level. Mr. J requested a formal hearing. The division was represented at the hearing by PFD Specialist Pete Scott, who filed a position paper. Mr. J received some assistance from Ms. J E at the hearing.

Administrative Law Judge Mark T. Handley heard the appeal. Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. J is disqualified for claiming to have been a resident of the state of California on paperwork he filed in court in order to show that the court had jurisdiction over his petition for dissolution of marriage. The division's denial of Mr. J's 2012 permanent fund dividend application is upheld.

II. Facts

Mr. J speaks, reads, and writes in English, but his first language is Tagalog. In his request for a formal hearing, Mr. J does not dispute the division's determination that he filed a petition for dissolution of marriage California, claiming that he was a resident of that state in 2011.¹ The petition that Mr. J filed was filed In Pro Per, that is, by Mr. J representing himself, rather than by an attorney representing Mr. J, but Mr. J had an attorney prepare the petition.² Mr. J explained that he went over the petition with the attorney before he signed it, but Mr. J did not understand the legal significance of claiming to be a resident of California to his PFD eligibility when he signed the petition.³

¹ Recording of Hearing & Exhibit 7.

² Recording of Hearing & Exhibit 7, page 4.

³ Recording of Hearing.

III. Discussion

Mr. J was very honest about the circumstances of surrounding the filing of his petition for dissolution in California. Unfortunately, the PFD eligibility requirements are very strict. Some of these requirements are found in Alaska Regulation 15 AAC 23.143(d). This regulation sets out a list of actions that will disqualify a PFD applicant, regardless of the applicant's Alaska residency status, if the applicant takes one of these actions during the PFD qualifying year. One of these actions is for the PFD applicant to have disclosed in a court proceeding that he was a resident of another state or country. Mr. J took this action when he filed the petition claiming that he had been a resident of Riverside County, California for at least the six months, and for at least the three months immediately preceding January 24, 2012.⁴ Another of the disqualifying actions listed in the regulation is for the PFD applicant to have filed specifically for dissolution of his marriage in another state or country that required the PFD applicant to be a resident of that state or country in order to file for the dissolution. Mr. J took this action when he filed for dissolution of marriage in California, which has jurisdictional residency requirements that Mr. J claimed to have satisfied by asserting that he was a resident of Riverside County, California for at least the six months and for at least the three months immediately preceding January 24, 2012.

Alaska Regulations 15 AAC 23.143(d)(8) & (15) read:

15 AAC 23.143. Establishing and maintaining Alaska residency

(d) An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has

(8) disclosed in a court proceeding or affidavit that the individual is a resident of another state or country;

(15) filed for divorce, dissolution, or legal separation in another state or country that required the individual to be a resident of that state or country in order to file the action;

California Code - Section 2320 reads:

A judgment of dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition.

⁴ Exhibit 7, page 4.

Mr. J claimed that he, and not his wife, met the state and county residency requirements to file for dissolution in the California court where he filed the petition. He is therefore disqualified under both 15 AAC 23.143(d)(8) & (15).

IV. Conclusion

Mr. J's California court filing in 2011 makes Mr. J ineligible for a 2012 PFD. The division denial of the application of B J for a 2012 permanent fund dividend is therefore affirmed.

DATED this 11th day of February, 2013.

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 12th day of March, 2013.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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