

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

In the Matter of:)	
)	
N M)	OAH No. 13-0823-PFD
)	PFD No. 2012-030-2276
<u>PFD Year 2012</u>)	

DECISION

I. Introduction

N M was an Alaska resident who left Alaska in late October 2011 to obtain work and be near family in Georgia. He shipped various goods to Georgia, and he claimed a deduction for moving expenses on his 2011 federal tax return. The Permanent Fund Dividend Division denied his application for a 2012 permanent fund dividend (PFD). Because Mr. M's acts of leaving Alaska in 2011 and claiming a moving expense deduction for 2011 make him ineligible for the 2012 PFD, the Division's decision is affirmed.

II. Facts

N M lived in Alaska, and received a PFD, from 1982-1987. He then left Alaska for many years, and returned on December 3, 2007. He is a professional mover, and in early 2008, he obtained work with a moving company.¹ He received a PFD in 2009-11.²

On October 31, 2011, Mr. M left Alaska and traveled to Georgia.³ He shipped goods from Alaska to Georgia, and on his 2011 federal tax return, he claimed moving expenses of \$7,030.⁴

At the hearing, Mr. M explained that the moving expenses were not for his household or personal goods. Most, if not all, of the goods he shipped were family heirlooms that he wanted to distribute to his Georgia relatives after two of his Alaska relatives died.⁵ He said that he had no fixed home in Georgia, and that he still considered his permanent home to be the Anchorage residence owned by one of his Alaska relatives. He explained that when he left Alaska in

¹ Division Exhibit 8; M testimony.

² Division Exhibits 1, 8.

³ Division Exhibit 10;M testimony.

⁴ Division Exhibit 10.

⁵ M testimony.

October 2011, he considered himself a “snowbird,” no different than many other Alaskans who travel during winter months. He recognized that now, because he has been gone so long, he would not be eligible for PFDs after 2012 until he reestablished his eligibility. He was adamant, however, that to this day he considers himself an Alaska resident.⁶

Mr. M filled out an online application for the 2012 dividend year on February 5, 2012. The Division requested additional information, which Mr. M provided. The division denied Mr. M’s appeal, finding that he had maintained his principal home outside Alaska, moved and claimed moving expenses, and, at least as of the date of the application, did not have the intent to remain in Alaska indefinitely.⁷ Mr. M appealed. A telephonic hearing was held on August 1, 2013. Mr. M represented himself. Pete Scott represented the Division.

III. Discussion

In some cases, eligibility for a PFD may be a subjective inquiry that depends on the circumstances. In other cases, PFD eligibility is objective, and turns on strict rules that must be applied without regard to a person’s subjective intent or circumstances.

This case turns on an objective rule. Under the rules, a person is not eligible for a PFD if the person has (i) moved from Alaska for a reason other than one listed in statute, and (ii) claimed moving expenses during the qualifying year as a deduction on the individual’s federal income tax return.⁸

A 2009 case on PFD eligibility, *In re M. & B. C.*, makes clear that the rule on moving and moving expenses is “absolute.”⁹ Under the undisputed facts, when Mr. M left Alaska, it was not for one of the reasons allowed by statute.¹⁰ And he does not dispute that he claimed a deduction for moving expenses on his 2011 federal tax return, and 2011 is the qualifying year for the 2012 dividend. Therefore, under 15 AAC 23.143(d)(10), Mr. M is not eligible for 2012 dividend.¹¹

⁶ M testimony.

⁷ Division’s Position Statement at 3-4.

⁸ 15 AAC 23.143(d)(10).

⁹ *In re M. & B. C.*, OAH No. 09-0618 at 4 (Commissioner of Revenue 2009).

¹⁰ M testimony. For example, Mr. M did not leave to go to school, serve in the military, or work for a member of congress. See AS 43.23.008(a)(1) – (3), (9) – (11), (16).

¹¹ Because this appeal is decided under 15 AAC 23.143(d)(10), it is not necessary to consider the Division’s other grounds for denying Mr. M’s PFD.

IV. Conclusion

Mr. M left Alaska in 2011 and he claimed moving expenses on his 2011 federal tax return. He is not eligible for the 2012 PFD, and the Division's decision denying his 2012 application is affirmed.

DATED August 2, 2013

Signed _____
Stephen C. (Neil) Slotnick
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 10th day of September, 2013.

By: *Signed* _____
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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