

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

In the Matter of:)	
)	
D T)	
)	OAH No. 13-1040-PFD
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-062-8452

DECISION

I. Introduction

D T submitted an application for a 2012 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (Division) denied his application because it concluded that he had been absent from Alaska for more than 45 days in addition to his absence for medical treatment during the 2011 qualifying year.² Mr. T filed an informal appeal of that determination.³ The Division denied his informal appeal⁴ and Mr. T requested a formal hearing.⁵

The formal hearing was held on August 29, 2013. Mr. T appeared by telephone, and testified in support of his eligibility for a 2012 PFD. The Division was represented by PFD Specialist Pete Scott. Based on the evidence in the record, Mr. T is not eligible to receive a 2102 PFD.

II. Facts

Mr. T has been a resident of Alaska since 1959.⁶ Since approximately 1988, Mr. T has had to be absent from Alaska for significant periods of time in order to obtain medical treatment. Mr. T owns property in Alaska, has numerous friends and relatives in the state, and maintains significant ties to Alaska.⁷ Mr. T also owns a one story, three bedroom home in Clark County, Nevada.⁸ On June 1, 2005, Mr. T certified that this property was his primary residence.⁹ Because it was his primary residence, Mr. T obtained a lower property tax rate.¹⁰

¹ Exhibit 1.
² Exhibit 4.
³ Exhibit 5.
⁴ Exhibit 7.
⁵ Exhibit 8.
⁶ T testimony.
⁷ Exhibit 5, page 4 – 5.
⁸ Exhibit 10.

III. Discussion

At the formal hearing level, the Division asserted four reasons in support of upholding its determination that Mr. T was not eligible for a 2012 PFD:

- (1) that he was absent from Alaska more than 45 days in addition to his absence for medical treatment;¹¹
- (2) that he maintained a principal home outside of Alaska;¹²
- (3) that he maintained a homestead exemption for his Clark County property;¹³ and
- (4) that he did not meet the definition of an Alaska resident on the date of application for the 2012 PFD.¹⁴

Mr. T contested each of these grounds for denying his application. However, he conceded that he did sign the document certifying that the Clark County home was his principal residence. A person is not eligible to receive a PFD if, during the qualifying year or prior to the date of application, the individual has “the individual’s principal home in another state or country, regardless of whether the individual spent a majority of time at that home[.]”¹⁵

Previous cases have held that this eligibility exclusion applies when a person establishes a primary home in another state.¹⁶ The document signed by Mr. T says,

If this is the **OWNER’S PRIMARY RESIDENCE** remove, sign and return THIS CARD ONLY. Only one owner needs to sign this card. Do NOT return THIS CARD if this is a rental property. Property you own and occupy that is NOT your primary residence will receive an 8% cap on the tax bill.

I affirm and certify under penalties pursuant to law that I am the owner of this property and that this is my primary residence and I will notify the Assessor if this property is no longer used as my primary residence.^[17]

Mr. T clearly declared that his Clark County property was his primary residence. He may not have known all of the legal consequences that would flow from his decision to make it his primary residence, but that does not change the fact that this home was his primary residence

⁹ Exhibit 11, page 6; T testimony.

¹⁰ Exhibit 11, page 1.

¹¹ Position Statement, page 3.

¹² Position Statement, page 4.

¹³ Position Statement, page 5.

¹⁴ Position Statement, page 5.

¹⁵ 15 AAC 23.143(d)(a). There are exceptions to this rule for individuals absent from the state for certain specified reasons. Those exceptions do not apply to individuals who are absent for medical treatment.

¹⁶ See *In re J.R.W.*, OAH No. 09-0669-PFD (Commissioner of Revenue 2010), page 5, available online at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD090669.pdf>

¹⁷ Exhibit 11, page 6 (formatting and emphasis in original).

during the 2011 qualifying year. Having established a primary residence outside of Alaska, Mr. T is not eligible for a 2012 PFD even if his entire absence were allowable.¹⁸

Because Mr. T is not eligible for a 2012 PFD based on this regulation, it is not necessary to resolve the factual and legal disputes concerning the Division's other reasons for denying his application.

IV. Conclusion

Mr. T established his principal residence in Clark County, Nevada. Because he maintained a principal home outside of Alaska during the 2011 qualifying year, Mr. T is not eligible to receive a 2012 PFD.

Dated this 3rd day of September, 2013.

Signed _____
Rebecca L. 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 21st day of October, 2013.

By: *Signed* _____
Signature
Angela M. Rodell _____
Name
Commissioner _____
Title

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

¹⁸ He would not be eligible for a PFD even if not absent from Alaska since his principal residence is not in Alaska.