

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

In the Matter of: )  
 )  
 Q L )  
 ) OAH No. 13-1293-PFD  
 ) Agency No. 2013-027-8614  
2013 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

Q L applied for a 2013 Permanent Fund Dividend (PFD).<sup>1</sup> The Permanent Fund Dividend Division (division) denied his application because he answered “no” to a question on the application about whether he intended to return to Alaska and also because he maintained a principal home outside of Alaska.<sup>2</sup> After completing the informal appeal process, Mr. L requested a formal hearing.

A hearing was held on November 12, 2013. Mr. L represented himself. The division was represented by its lay advocate, Bethany Thorsteinson. The division’s denial is reversed because Mr. L had not severed his Alaska residency or maintained a principal home outside of Alaska as of the date of his application.

**II. Facts**

The relevant facts are not in dispute. Mr. L left Alaska on November 12, 2012. He flew south with his son and had his car shipped down to Washington, where he picked it up and drove to Arizona intending to purchase a motor home and drive back to Alaska. His plan was to use an anticipated settlement from the Veterans Administration to finance the motor home and return trip.<sup>3</sup> He started renting an apartment in Arizona on December 12, 2012.

Mr. L brought his computer, printer, television, and clothes with him to Arizona, and has no personal possessions in Alaska. He does have a bank account in Alaska, and his car remains registered here.

Mr. L’s son left Arizona and then came back down in February or March of 2013. Mr. L has remained in Arizona to help his son get established and enrolled in school. He expected to

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2, page 1. The division appears to have abandoned the third listed reason; that Mr. L claimed residency outside of Alaska in his employment records.

<sup>3</sup> Unless otherwise noted, the factual findings are based on the testimony of Mr. L.

have that accomplished by the Spring of 2013, but now it appears that his son won't start school until sometime in 2014.

Meanwhile, Mr. L's VA settlement has been delayed. At the time of hearing he had not received the money but expects to receive it soon. Until then he cannot afford to purchase a motor home for the drive north. If the settlement does not come through, Mr. L intends to fly back to Alaska once his son starts school.

### **III. Discussion**

Alaska law sets out a list of requirements for PFD eligibility. The three requirements relevant to this case are that the applicant must 1) be a state resident on the date of application; 2) be a state resident during the entire qualifying year; and 3) be present in Alaska during the entire qualifying year unless absent for an allowable reason.<sup>4</sup>

The first issue to be addressed is whether Mr. L remained a state resident from November 12, 2012, when he left Alaska, through January 30, 2013, the date of his application.

The answers on his PFD application are consistent with the intent to return to Alaska. In explaining the reason why he was absent on the date of application, he stated

Came to Arizona to purchase a motorhome, and drive back to Alaska. Things didn't turn out the way I expected, (financially) so I may be here a little while longer.<sup>[5]</sup>

In explaining why he was not returning to Alaska immediately, he stated

I can not afford to go back to Alaska at this time, I can not promise that I will be back up there soon.<sup>6</sup>

His explanations qualify his "no" answer to the question about his intent to return, and show that while he was not returning immediately, did intend to return at some time. His answers and explanations are consistent with his testimony. Although he stated in his application that he could not promise to return "soon," not knowing the precise date of return does not preclude him from being a resident of Alaska. While an extended absence could make him ineligible to receive a PFD,<sup>7</sup> an extended absence by itself does not sever residency.<sup>8</sup>

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<sup>4</sup> AS 43.23.005(a).

<sup>5</sup> Exhibit 1, page 2 (original is in all capital letters).

<sup>6</sup> Exhibit 1, page 3 (original in all capital letters). The actual questions from the application are not in the record, just Mr. L's answers.

<sup>7</sup> AS 43.23.008(a)(17).

<sup>8</sup> See AS 01.10.055(c) (a person absent from the state remains a resident unless he establishes or claims residency in another location, or his actions or other circumstances are inconsistent with the intent to return and

The second issue is whether Mr. L's absence is for an allowable reason. A person who is not claiming any other type of absence may be allowably absent from Alaska "for any reason consistent with the individual's intent to remain a state resident" as long as the absence does not exceed 180 days.<sup>9</sup> Mr. L left Alaska on November 12, 2012, so he was absent for only 49 days during the 2012 qualifying year.

The division has adopted regulations to help ascertain whether an absence is consistent with the intent to remain a state resident. With some exceptions not applicable here, an individual is not eligible to receive a PFD if he has "maintained [his] principal home in another state or country, regardless of whether he individual spent a majority of time at that home[.]"<sup>10</sup> Mr. L testified that he no longer rents an apartment in Alaska. That alone does not mean his principal home is in Arizona. The Commissioner of Revenue "has consistently found that an applicant is not required to have a principal home, and may have no principal home, but still remain an Alaska resident for PFD purposes."<sup>11</sup>

Mr. L also testified that he gave away most of his household goods before traveling to Arizona, and took with him to Arizona his computer, printer, television, clothing, and automobile. However, a person does not lose eligibility simply because he is not storing his household goods in Alaska.<sup>12</sup> This is especially true when there is no evidence that the person had a substantial amount of household goods to begin with.<sup>13</sup>

As of the date of application, Mr. L's son was still in Alaska. As of that date, Mr. L was still expecting his VA settlement, and planning to purchase a motor home to drive north. Mr. L testified that he was renting his apartment in Arizona on a month to month basis, so it remained possible for him to return to Alaska on short notice. At least as of the date of application, Mr. L had not established the Arizona apartment as his principal home.

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remain in Alaska indefinitely). See 15 AAC 23.163(f) (after five years of allowable absence, there is a rebuttable presumption that the individual does not intend to return).

<sup>9</sup> AS 43.23.008(a)(17)(A).

<sup>10</sup> 15 AAC 23.143(d)(1).

<sup>11</sup> *In re L and S M*, OAH No. 11-0416-PFD (Commissioner of Revenue 2012) page 4, available online at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD110416.pdf>.

<sup>12</sup> *In re K.G.*, OAH No. 09-0257-PFD (Commissioner of Revenue 2009), page 4, <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD090257.pdf>.

<sup>13</sup> *In re S M*, OAH No. 11-0394-PFD (Commissioner of Revenue 2012), page 3, <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD110394.pdf>

**IV. Conclusion**

Because Mr. L had not severed his Alaska residency or established a principal home outside of Alaska on or before January 30, 2013, he remained eligible to receive a 2013 PFD. This finding is limited to the 2013 PFD and for that reason the division’s denial of his application is reversed.

Dated this 13<sup>th</sup> day of November, 2013.

Signed  
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Jeffrey A. Friedman  
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 23<sup>rd</sup> day of December, 2013.

By: Signed  
\_\_\_\_\_  
Signature  
Angela M. Rodell  
\_\_\_\_\_  
Name  
Commissioner  
\_\_\_\_\_  
Title

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