

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

IN THE MATTER OF	)	OAH No. 13-1294-PFD
D O	)	Agency No. 2013-035-7155
	)	
_____	)	

**DECISION & ORDER**

**I. Introduction**

This case is D O's appeal of the denial by the Permanent Fund Dividend Division (Division) of his 2013 Permanent Fund Dividend (PFD) application. Mr. O timely applied for a 2013 Permanent Fund Dividend. The Division determined that Mr. O was not eligible, and it denied the application initially and at the informal appeal level. The Division determined that Mr. O was not an Alaska resident in 2011 and did not re-establish his Alaska residency before January 1, 2012. Mr. O requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal. Mr. O represented himself. PFD specialist Bethany Thorsteinson represented the Division and filed a position paper. After the hearing, a post hearing order was issued setting deadlines for post hearing filings. The record closed on November 15, 2013.

Having reviewed the record in this case and after due deliberation, I conclude that Mr. O is not eligible to receive a 2013 PFD because was not an Alaska resident for all of 2012, the 2013 PFD qualifying year.

**II. Facts**

The last PFD that Mr. O qualified for before he filed his 2013 PFD application was the 2009 PFD. Mr. O did not apply for the 2010 PFD or the 2011 PFD, and his application for a 2012 PFD was denied because he did not re-establish his Alaska residency before January 1, 2011, the beginning of the 2012 PFD qualifying year.<sup>1</sup> Mr. O admitted living in Washington State and the Philippines prior to moving back to Alaska. Mr. O asserted that he moved back to Alaska on April 10, 2011, but the evidence in the record shows that it is more likely than not that he did not move back to Alaska before April of 2012.<sup>2</sup>

At the formal hearing, Mr. O testified that he moved back to Alaska from Washington State on April 10, 2011, but on his 2012 PFD application he wrote that April 24, 2012 was the date that

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<sup>1</sup> Exhibit 4.

<sup>2</sup> Recording of Hearing, Exhibit 1-26 & Mr. O's post hearing submissions.

his most recent Alaska residency began.<sup>3</sup> The April 24, 2012 date is the date that is most supported by the evidence in the record.<sup>4</sup>

At the hearing, Mr. O often demonstrated confusion when discussing what year events related to his Alaska residency occurred. The documentation that he provided before and after the hearing was consistent with a move back to No Name, Alaska, that occurred on April 24, 2012. This evidence was not consistent with a move back to No Name, Alaska, that occurred on April 10, 2011. The Division provided records of its interactions with Mr. O during the application and appeals process. These records show Mr. O's repeated failures to timely provide the Division with adequate documentation that the Division requested to clarify his inconsistent claims regarding his residency and his presence in Alaska.<sup>5</sup>

One example of documentary evidence that is inconsistent with Mr. O's claim that he reestablished Alaska residency before January 1, 2012 is his failure to obtain an Alaska drivers' license before that date. There is now no dispute that Mr. O had a Washington State drivers' license until he applied for an Alaska drivers' license in July of 2012. This Washington drivers' license was obtained in October of 2011, and Mr. O used one of the properties in Washington that he still owns as his resident address when he applied for that license.

Mr. O's failure to disclose his Washington drivers' license is also an example of his lack of credibility on issues related to his Alaska residency. On his 2012 and 2013 PFD applications, Mr. O indicated that he had not had a drivers' license in another state in 2011 or 2012.<sup>6</sup>

Although Mr. O characterized his presence in Washington in 2011 as an absence for medical treatment, the evidence shows that he was still living primarily in Washington that year. Mason County Court records show cases in which Mr. O was a party in June and July of 2011. At the hearing, Mr. O was not able to provide a plausible explanation for those records that was consistent with his testimony about his presence in Alaska.<sup>7</sup>

Another example of Mr. O's lack of credibility when responding to issues regarding his presence in Alaska is found on his 2012 PFD application. The instructions on the application directed him to mark either "yes" or "no" in answer to the question: "Are you present in Alaska

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<sup>3</sup> Exhibit 9, page 4.

<sup>4</sup> Recording of Hearing, Exhibits 1-26 & Mr. O's post hearing submissions.

<sup>5</sup> Exhibit 25.

<sup>6</sup> Exhibit 1.

<sup>7</sup> Recording of Hearing.

today?” Mr. O answered the question by marking “yes” on the application. There is no dispute that he was filing on-line from the library in No Name, Washington, where he owns residential property, when he provided this answer.<sup>8</sup>

The documents that Mr. O provided after the hearing are all consistent with a move to Alaska that occurred after March of 2012. None of the records that Mr. O provided show an invoice for an expense incurred in Alaska that occurred in 2011. The property in No Name that Mr. O is living in was not transferred to him until 2012. As a long-time owner of residential rental property, it is not likely that Mr. O would not be able to produce records of expenses incurred that would show that he was living in Alaska since before the beginning of 2012, if he had moved here before January 1, 2012.<sup>9</sup>

Based on the evidence in the record, I find that it is more likely than not that during the first three months 2012, the qualifying year for a 2013 dividend, Mr. O was a resident of Washington living in that state.

### **III. Discussion**

A person cannot become eligible for a 2013 Alaska PFD while living outside Alaska as the resident of another state. This requirement is found in Alaska Regulation 15 AAC 23.143(b).

A person must be an Alaska resident to eligible for a dividend. A “state resident” is someone who is physically present in Alaska with the intent to remain indefinitely 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 in the state under the requirements of AS 01.10.055. Under AS 01.10.055, a person becomes an Alaska resident by being physically present in the state with the intent to remain indefinitely and to make a home in the state. Having established residency, a person remains a resident while absent unless he establishes or claims residency somewhere else, or performs acts that are inconsistent with the intent to remain a resident.

In a PFD denial appeal, the person who filed the appeal, in this case, Mr. O, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>10</sup> Mr. O did not meet his burden of proof to show that the Division’s determination that he was not an Alaska resident for all of 2012 was incorrect. Mr. O’s inconsistent representations regarding his presence in Alaska and his inadequate and implausible responses when confronted with the

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<sup>8</sup> See Mr. O’s post hearing filings.

<sup>9</sup> Exhibits 1, 4, 9 & 12.

<sup>10</sup> Alaska Regulation 15 AAC 05.030(h).

contradictions between his testimony and the documentary evidence indicating he did not move back to Alaska until 2012 so diminish his credibility that the only reliable evidence in the record is that documentation. That documentation, as noted above, indicates that Mr. O moved back to Alaska in the spring of 2012 after living in Washington and the Philippines for the past several years. Mr. O still owns more residential property in Washington than he does in Alaska, and it is not really clear that Alaska is even now his primary home.

Mr. O moved to Washington and lived there as a resident in 2010, 2011, and the first part of 2012. The evidence shows that Mr. O did not move to Alaska before 2012 under circumstances that were consistent with the intent to become an Alaska resident. Mr. O's move to Washington to live in the home he owns there for what was, at that time, an indefinitely long and extended absence, means that he was not an Alaska resident after that move, and was not an Alaska resident before he moved back in 2012. Under the law, Mr. O simply does not qualify for a dividend for 2013.

#### **IV. Conclusion**

Mr. O was not an Alaska resident for the first part of 2012. It is not necessary to determine if he became an Alaska resident in 2012. Mr. O does not qualify for a 2013 PFD. The decision of the Division to deny the application of D O for a 2013 Permanent Fund Dividend is **AFFIRMED**.

DATED this 24<sup>th</sup> day of December, 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 31<sup>st</sup> day of January, 2014.

By: Signed  
Signature  
Angela M. Rodell  
Name  
Commissioner  
Title

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