

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

In the Matter of)	
)	
B AND M D)	
)	OAH No. 13-1829-PFD
<u>2013 Permanent Fund Dividend</u>)	Agency No. 2013-026-7040/7029

DECISION

I. Introduction

B and M D, a married couple, challenge the division’s determination that neither is eligible to receive a 2013 PFD because they maintained a principal home in another state, and by so doing, severed their Alaska residencies. The Ds believe they should receive the 2013 PFD because Alaska is their home, they always intended to return, and they were allowably absent while Mr. D received medical treatment. The issues raised are fact-specific, and under these facts the Ds are eligible for 2013 PFDs.

II. Facts

The material facts in this case are uncontested. Rather, it is the legal consequence of the facts that is in dispute.

B and M D have received PFDs from 2005 through 2012. Ms. D received PFDs from 1982 through 1986. The Ds timely applied for their 2013 PFDs while they were in Oregon. On their 2013 PFD applications, the Ds provided an Oregon address. They also answered “no” when asked if they maintain their principal home in Alaska.

Upon retirement, the Ds loaded their RV with all of their belongings and left on what was intended to be a five-week driving vacation. They sold all of their belongings that would not fit in the RV, but maintained “paper ties” to Alaska (bank, driver’s license, etc.). Their plan was to return to Alaska and supplement their income with part-time work.

Their absence started as a five-week trip to the visit family and drive across the country in their motor home. However, Mr. D contracted Sepsis Pneumonia while they were in Oregon and that is where they have stayed while he recovers. He spent 6 weeks in intensive care and two months in a cardiac ward. He is released, but his medical issues have resulted in him needing dialysis three days a week. The dialysis is performed through a jugular catheter, which

will be replaced within the next few months with fistular¹ access. The fistula procedure has been delayed due to other medical complications. Once the procedure is performed, it will take up to 6 months before the fistula is stable enough to be used for dialysis, at which point the Ds will return to Alaska and purchase a home.

Mr. D has provided a Medical Treatment Verification certifying that he has been under continuous medical treatment since March 9, 2012 and ongoing.² The form was signed February 11, 2013.

III. Discussion

At its essence, this case is about whether the Ds have established or maintained a principal home in another state.

To be qualified to receive an Alaska Permanent Fund dividend, two criteria must be met: an applicant must be an Alaska resident as defined by law and, in addition, must meet the eligibility requirements established by the division in its regulations. It is the Ds' burden to prove that they are eligible for the 2013 PFD.³ To meet the definition of "state resident" for purposes of a PFD an applicant is required to have been a state resident during the entire qualifying year⁴ through the date of application.⁵ A person establishes residency in Alaska by being physically present, unless allowably absent, with the intent to remain in Alaska indefinitely.⁶ By regulation, the Department of Revenue has determined that an individual demonstrates the intent to remain in Alaska indefinitely "through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere."⁷

The Department of Revenue has promulgated regulations that provide guidance to the division when evaluating an applicant's eligibility.⁸ 15 AAC 23.143(d) lists 17 actions that are so typically indicative of residency in another state or country that any one of the actions renders

¹ A fistula is created by connecting an artery directly to a vein, thereby causing more blood to flow into the vein, making the vein stronger, and making repeated needle insertions for dialysis easier.
<http://kidney.niddk.nih.gov/kudiseases/pubs/vascularaccess/#what> (accessed February 13, 2014).

² Exh. 2 at 1.

³ 15 AAC 05.030(h).

⁴ AS 43.23.095(6) ("'[Q]ualifying year' means the year immediately preceding January 1 of the current dividend year....")

⁵ 15 AAC 143(d).

⁶ AS 01.10.055(a).

⁷ 15 AAC 23.143(a).

⁸ 15 AAC 23.143(d).

the applicant ineligible for a PFD without a detailed inquiry into the Alaska residency criteria. This regulation provides that an individual is not eligible for a dividend if, during the qualifying year or at the date of application, the individual has maintained a principal home in another state, except while absent for certain allowable reasons that do not apply to this case.⁹ Generally speaking, an applicant who maintains a principal home outside of Alaska may not receive a PFD, but the regulations do not impose a duty to maintain a principal home inside the state or in any state.¹⁰ Rather, a resident is ineligible to receive a PFD if the applicant *establishes* a primary home in a place other than Alaska.¹¹

The unchallenged evidence establishes that the Ds were Alaska residents when they hit the road in their RV. As such, they remain residents while allowably absent from Alaska, provided they do not take actions that are incompatible with remaining an Alaska resident. A resident may be allowably absent for up to 180 days for any reason consistent with the intent to remain an Alaska resident.¹² So when they left Alaska for a five-week road trip, they were allowably absent. While on the trip, Mr. D became ill and has not been released to travel.¹³ Ms. D has been absent caring for her husband. A person may be allowably absent receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the treating physician.¹⁴ A person may be allowably absent caring for a spouse who is allowably absent receiving medical treatment.¹⁵ The Ds, if residents, are allowably absent.

The division contends that the Ds have maintained a principal home in Oregon, an act which is inconsistent with the intent to return to Alaska to remain indefinitely. A “principal home” is not defined in the PFD regulation or statutes. The division reasons that the Ds’ RV is their principal home and where ever it goes so goes their principal home.

The division’s reasoning is contrary to the Commissioner of Revenue’s ruling that a person is not required to have a principal home in Alaska or elsewhere. A person may not

⁹ 15 AAC 23.143(d)(1). (The exceptions are attending school, serving in the military, serving as a member of congress or congressional staff, and state employment that is based in another location.)

¹⁰ *In re J.R.W.*, OAH No. 09-0669-PFD at 4.

¹¹ *Id.* at 5.

¹² AS 43.23.008(17)(a)(A).

¹³ Ex. 2 at 1.

¹⁴ AS 43.23.008(a)(5).

¹⁵ AS 43.23.008(a)(6).

remain a resident of Alaska if they establish a principal home in another state.¹⁶ Whether a person has maintained or established a principal home in another state is fact-specific, so it is determined on a case-by-case basis.

The Ds argue they remain residents of Alaska because they are allowably absent under circumstances consistent with the intent to remain in the state indefinitely and make a home.¹⁷ They did not understand the legal significance of marking “no” on the application regarding a principal home in Alaska. In the PFD statutes “principal home” is an undefined term of art and its legal significance may not be appreciated by an applicant. Regardless, simply marking “no” invites further inquiry, but it is not determinative. The Ds marked “no” because they were living in Oregon while Mr. D obtained medical treatment and had no other address to provide the division. The Ds do not have a principal home in Alaska, but they have not established or maintained a principal home in another state.

As to residency, the division argues that the Ds are unable to form the intent to return because Mr. D is unable to return.¹⁸ The division relies upon a 2009 decision, *In re R.M.*,¹⁹ where the applicant was totally disabled in an accident receiving medical treatment out of state and living in an apartment. Mr. M was unable to identify when or if he would be able to return to Alaska but wanted to return to Alaska as soon as he was able. The decision determined that “it is reasonable to conclude that a person does not intend to do what he is unable to do, no matter how much he wishes to.”²⁰ Mr. M’s application was denied.

As can be seen in the prior cited case, when determining residency, an important element is the definite or indefinite nature of a person’s intent to remain in Alaska. The converse is true when determining whether a person is absent under circumstances that are inconsistent with Alaska residency. This is not to say that every person who leaves the state must know their precise date of return in order to retain residency. But persons who intend to return to Alaska to remain and make their home can be expected to have at the least a general sense of when they will return, or have their returns contingent on events that can reasonably be expected to occur within an identifiable period of time, such as graduation from college.

¹⁶ 15 AAC 23.143(d)(1).

¹⁷ AS 01.10.055(c).

¹⁸ *In re R.M.*, OAH No. 09-0147-PFD (Commissioner of Revenue 2009).

¹⁹ *Id.*

²⁰ *Id.* at 2.

The Ds wish to return to Alaska and intend to do so. Their return is contingent on an event that can reasonably be expected to occur within a year. Because the Ds left on an allowable absence, remain allowably absent, intend to return, and have a reasonably stable time frame for returning to Alaska, they have established by a preponderance of the evidence that they remain residents of Alaska. When they marked that they had no principal home in Alaska, the Ds did not understand what the question was asking, so it is of little value in determining whether the Ds maintain a principal home in another state. On the evidence presented, the Ds have established that they do not have a principal home in another state.

It is important to note that each PFD application stands on its own. Time is but one factor to be considered to determine residency or a principal home. If the Ds fail to return as represented, it may be that the facts no longer support their eligibility for a PFD.

IV. Conclusion

B and M D do not maintain their principal home in another state. They have not severed their Alaska residency for purposes of the 2013 permanent fund dividend. The division's decision to deny their applications is REVERSED.

DATED this 3rd day of April, 2014.

By: 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 2nd day of May, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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