

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

In the Matter of:	)	
	)	
L M & Z U and the children,	)	OAH No. 14-0268-PFD
A M, D M, Q M & O M	)	Agency No. 2013-004-6017
	)	& 2013-004-5536
<u>2013 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

This case is the appeal of L M and Z U and the children, A M, D M, Q M and O M (Mr. M and his family). Mr. M appealed the denial of his applications for a 2013 Alaska Permanent Fund Dividends (PFDs) for himself and his family.

Mr. M and his family timely applied for his 2013 PFD. Mr. M and his family's applications were denied by the Permanent Fund Dividend Division (Division) because they had moved from Alaska before their 2013 PFD applications were filed. Mr. M and his family requested an informal appeal and were again denied. Mr. M and his family then requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal. A pre-hearing conference was held to explain what to expect at the formal hearing. The hearing was held on April 2, 2014. Mr. M and Ms. U appeared by telephone. Hmong interpreters provided services at both the pre-hearing conference and the hearing. PFD specialist Bethany Thorsteinson represented the Division by telephone. The hearing was audio recorded. The record in this appeal closed at the end of the hearing.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. M and his family does not qualify for a 2013 dividend, because they did not meet their burden of proof to show that not decided to move from Alaska permanently in 2012 moved or before the date of application for the 2013 PFD.

**II. Facts**

There is no real dispute regarding the relevant facts in this case.<sup>1</sup> Mr. M and his family qualified for the 2010 through 2012 PFDs. Mr. M and his family lived in Alaska for all of 2012.

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<sup>1</sup> Recording of Hearing.

<sup>2</sup> Exhibit 9 & Recording of Hearing.

Mr. M and his family apparently began to take steps to move from Alaska in November of 2012. On November 16, 2012 Mr. M signed a letter of resignation with his Alaska employer. In that letter, Mr. M indicated that his reason for his resignation was that he was leaving the state. Mr. M's last day of work at that job was November 30, 2012. On December 5, 2012, Mr. M and his family, gave notice to their landlord that they would be moved out by January 31, 2013.<sup>3</sup>

Mr. M and his family filed their 2013 PFD applications electronically on January 3, 2013.<sup>4</sup> At some time that month, Mr. M and his family filed a permanent change of address with the post office giving their current address in California as their new permanent mailing address.<sup>5</sup>

At the hearing, Mr. M and Ms. U did not dispute the Division's finding that they had decided to move before they applied for their 2013 PFDs. Ms. U explained that he left Alaska because it was too cold. Ms. U argued that she, Mr. M and their family should be eligible despite their planned move to California because they were residents of Alaska for all of 2012.<sup>6</sup>

Based on the evidence in the record, I find that during 2012, Mr. M and his family did not show that it was more likely than not that the Division's finding that knew when they would be moving from Alaska to current address in California to live there without any plans to move back to Alaska.<sup>7</sup>

### **III. Discussion**

To qualify for the 2013 PFD, an applicant must meet the eligibility requirements during all of the 2012, the qualifying year for the 2013 PFD, and through the date of application. As applied to Mr. M and his family's application, that means he must have been an Alaska resident through January 3, 2013, the date of his application, as well as during all of 2012.<sup>8</sup> PFD applicants who have definite plans to move out of Alaska on the date of their application are disqualified.<sup>9</sup>

Mr. M and his family's appeal appears is based on their assertion that they were Alaska residents of all of 2012. Residency in Alaska during the PFD qualifying year is not the only eligibility requirement for a PFD. As noted above, one of the many additional requirements is

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<sup>3</sup> Exhibit 6.

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 9.

<sup>6</sup> Recording of Hearing-Testimony of Ms. U.

<sup>7</sup> Exhibit 6 & Recording of Hearing.

<sup>8</sup> Alaska Statute AS 43.23.005(a).

<sup>9</sup> 15 AAC 23.143(h).

that the applicant not have definite plans to move away from Alaska on the date of application. Since the application period does not begin until January 2<sup>nd</sup> of the year after the PFD qualifying year, an applicant's state residency status during PFD qualifying period is not the only factor in determining the PFD applicant's eligibility. Other additional requirements include not claiming a residency benefit or registering to vote in another state during prior to the date of application.<sup>10</sup>

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Mr. M and his family, has the burden of proving by a preponderance of the evidence that the denial is incorrect.<sup>11</sup> Mr. M and his family did not show by a preponderance of the evidence that the Division was incorrect it's finding that they knew when they would be moving from Alaska to their current address in California to live there without any plans to move back to Alaska. They did not challenge the Division's position in regard to the facts. Mr. M and Ms. U were concerned about the Division's interpretation of the law as it applied to their situation. The Division correctly applied the law in this case.

Ms. U was also concerned that other individuals might have received PFDs in similar circumstance, but the fact that the Division may have incorrectly paid PFDs to other applicants would not make Mr. M and his family eligible.

#### **IV. Conclusion**

Mr. M and his family failed to show by a preponderance of the evidence that they did not plan to from Alaska on the date of application. The Division's decision is upheld. Mr. M and his family is not eligible to receive the 2013 PFD.

DATED this 9<sup>th</sup> day of April, 2014.

By: Signed \_\_\_\_\_  
Mark T. Handley  
Administrative Law Judge

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

<sup>11</sup> Alaska Regulation 15 AAC 05.030(h).

## 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 24<sup>th</sup> day of May, 2014.

By: Signed  
Signature  
Angela Rodell  
Name  
Commissioner  
Title

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