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

IN THE MATTER OF	)	
	)	OAH No. 14-0693-PFD
A & B M	)	Agency Nos. 2013-066-440,
and their child D	)	2013-066-441 &
	)	2013-066-442
2013 Permanent Fund Dividends	)	

DECISION

I. Introduction

A and B M timely applied for 2013 permanent fund dividends. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the application initially and at the informal appeal level. The Ms requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on June 7, 2014. Mr. M appeared in Anchorage. Pete Scott represented the PFD Division. The administrative law judge finds the applicants not to be eligible for 2013 dividends.

II. Facts

Mr. M first moved to Alaska in 1992 when he was transferred here by the U.S. Air Force. After he moved to Alaska, he married an Alaskan, B. Ms. M and her family own fairly undeveloped vacation property in No Name, Alaska. Mr. and Ms. M camp there and help pay property taxes on that land. Ms. M's brother and mother live in Alaska. Mr. M lived in Alaska for six years before he was transferred to California. A and B M continued to receive PFDs while Mr. M served on active duty away from Alaska, until the family lost PFD eligibility because their absence had exceeded ten years. After their visit in 2006, the Ms did not return to Alaska from September 2, 2006 until they moved back in October of 2012. Mr. and Ms. M did not apply for the 2009-2012 PFDs. They lived outside Alaska for over 13 years before they moved back more than half-way through 2012, the 2013 PFD qualifying period.

During their thirteen-year absence, the Ms maintained some residency ties to Alaska. The Ms were registered to vote in Alaska, but obtained drivers' licenses, and registered their vehicles in Nevada. Alaska was listed as the state of legal residence in Mr. M's employment records. The Ms continued to help pay property taxes on the family land in No Name.

Mr. M was under orders from the military for all but the last part of their thirteen-year absence. Mr. M retired from the military on December 31, 2011, which is nine months before his return to Alaska. At the hearing, Mr. M explained that, after he separated from the military, he was

living in a mobile home, receiving medical treatment though Veterans Administration facilities in Nevada until he was released for travel on August 29, 2012.

The Division estimates that Mr. M was absent for 48 days while not receiving medical treatment before he moved back to Alaska. This estimate is not reliable, however, because it assumes that Mr. M was not receiving continuous medical care before the date on the medical appointment record at exhibit 10, page 11, which the division assumes was his first after his retirement. That document shows that Mr. M was at the medical facility on that day primarily for a medication refill, and was already being prescribed morphine, hydrocodone and several other drugs to treat pain and other chronic conditions. This implies that Mr. M's treatment began before January 30, 2012. There are renal lab results dated February 27, 2012 at exhibit 10, page 24, indicating a visit "2 months ago." Taken as a whole, the information on the medical records Mr. M provided indicate that he was receiving continuous medical treatment that began before his retirement date, which is consistent with his testimony.[1]

At the hearing, Mr. M explained that he was appealing the Division's denial of their 2013 PFD application because he understood the Division's denial to mean that he and his wife had not maintained their intent to return to Alaska, which he disagreed with. Mr. M explained that he really was not able to visit Alaska more often before he moved back because of his job requirements and his medical situation. In his request for a formal hearing, Mr. M explained that they planned to retire in Alaska, but had not been planning to retire as soon as he did because of his medical problems.

III. Discussion

A person who has been allowably absent for more than five years is, by law, presumably not an Alaska resident anymore.[2] If an applicant attempts to overcome this presumption, the Division may rely on the following factors when making a decision[3]:

> (1) the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence;
>
> (2) the frequency and duration of return trips to Alaska during the absence; the fact that the individual has returned to Alaska in order to meet the physical presence requirement of AS 43.23.005(a)(4) is not sufficient in itself to rebut the presumption of ineligibility;

[1] *See for Example* the dates on the list of Active Medications at Exhibit 10, page 32.
[2] 15 AAC 23.163(f).
[3] 15 AAC 23.163(g).

> (3) whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska;
>
> (4) any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's licenses, or receipt of benefits under a claim of residency in another state;
>
> (5) the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel;
>
> (6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska; and
>
> (7) any ties the individual has maintained in Alaska, such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent.

When considering these factors, the Division must "give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not."[4] In considering what constitutes "frequent" return trips, thirty days in five years serves as a kind of guideline. Unless unavoidable circumstances have prevented return trips, the Division must "generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption" that he is no longer an Alaska resident.[5] The final rule governing this case is that a person requesting a formal hearing has the burden of proving that the Division's decision was in error.[6]

Mr. M was a credible witness. He seemed very sincere when he explained that he and his wife had planned to eventually move back to Alaska.

Mr. M maintaining his primary home outside Alaska would disqualify him from receiving a PFD. Mr. M really did not have a home other than his mobile home, located outside the state at the time between his retirement and moving back to Alaska, and there is no exception to the disqualification for maintaining one's primary home outside Alaska while on an absence for medical treatment.[7] Given the fact that Mr. M had no home in Alaska at this time, and had not lived

[4] 15 AAC 23.163(h)(1).
[5] 15 AAC 23.163(h)(2).
[6] 15 AAC 05.030(h).
[7] 15 AAC 23.143(d)(1)(a).

in Alaska for over a decade prior to his move back, it would be difficult to see how his living situation could be characterized as not having maintained his primary home outside of Alaska during this period.

Unfortunately, the Ms were also not Alaska residents for PFD eligibility purposes by the time Mr. M retired from the military. The law establishing presumptions on the intent of those on extended absences from Alaska requires that weight be given to the fact that the Ms had not been back to Alaska for more than thirty days in the five years prior to the date of their return. The regulations direct that PFD applicants in the Ms' situation are generally to be considered no longer Alaska residents.

Given their failure to make more frequent returns during the period when they were not even applying for PFDs, the Ms failed to show that at all times during this portion of their extended absence they maintained the intent to return to Alaska to make their home. The Ms' return to Alaska after a thirteen-year absence does not mean that they consistently maintained their intent to return at all times while they were living outside Alaska. They did not return to Alaska for thirty days in the five-year period before their return, or in any of the six years prior to their move back. While they maintained some paper ties to Alaska, it appears that they may have established some ties of residency to Nevada toward the end of their extended absence.

Applying the eligibility presumptions to the facts surrounding their absence, the Ms failed to provide persuasive evidence that during their absence their intent to move back to Alaska did not waver or change. Again, Mr. M was a credible witness and seemed sincere when he spoke of his wife and his ongoing desire to move back to Alaska during their absence, and the difficulties he had getting time off near the end of his military service. However, intent with regards to years-off future plans generally can be fairly described as gray rather than black and white. For example, Mr. M himself explained that he left military service much earlier than he had planned because of the unforeseen circumstance of his health problems. Although he had intended to stay in the service for many more years, that intent was conditioned on future events.

The PFD eligibility rules require that intent for PFD eligibility be measured by objective tests and that certain factors be given weight in applying those tests. Applying tests to the facts in the Ms case creates a presumption of ineligibility that they failed to overcome with persuasive evidence of their unwavering commitment to move back to Alaska.

The regulation creating the measure of thirty days in five years provides a kind of yardstick for measuring the likelihood that a person consistently maintains intent to move back to Alaska during an extended absence. While it does not create an absolute rule that those who do not return for at least thirty days in the past five years are not eligible, it is a rare case when an applicant will be able to present persuasive evidence of intent to return to Alaska that will overcome this presumption. The Ms' situation is not one of those cases.

IV. Conclusion

Considering all the evidence in this case, I find that Mr. and Ms. M have not rebutted the presumption that they failed to maintain the intent to return to Alaska to remain indefinitely and make it their home at all times when they were living outside the state. The Ms did not become Alaska residents again in time to be eligible for 2013 dividends.

The applications of A and B M and their child, D, for 2013 permanent fund dividends are DENIED.

DATED this 13th day of August, 2014.

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 26th day of September, 2014.

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

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