

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

In the Matter of:)	
)	
C L)	OAH No. 14-1556-PFD
)	Agency No. 2013-057-6811
<u>2013 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

This case is C L’s appeal of the denial of her application for a 2013 Alaska Permanent Fund Dividend (PFD). Ms. L timely applied for a 2013 PFD. Ms. L’s application was denied by the Permanent Fund Dividend Division (Division) because the Division determined that she had moved from Alaska and she did not demonstrate that she intended to return to and remain in Alaska indefinitely before she applied for the 2013 PFD. She requested an informal appeal and was again denied. Ms. L then requested a formal hearing by correspondence.

Administrative Law Judge Mark T. Handley heard the appeal. PFD specialist Pete Scott represented the Division and filed a position paper. Ms. L did not file a response to the Division’s position paper. The record in this appeal closed on October 31, 2014.

Having reviewed the record and after due deliberation, the Administrative Law Judge concludes that Ms. L does not qualify for a 2013 dividend because she moved from Alaska under circumstances that were inconsistent with the intent to maintain Alaska residency before she filed her 2013 PFD application.

II. Facts

Ms. L applied for a 2013 PFD on March 29, 2013.¹ Ms. L has a history of living and working in Alaska for seasonal employment. Ms. L lived in Alaska for portions of 2005 through 2008. In early 2009 she moved to Alaska to live here year-round, but then she moved away from Alaska again in March of 2010 and did not apply for the 2011 or 2012 PFDs. Ms. L moved back to Alaska in May of 2011 and then moved out of Alaska again on March 10, 2013.²

Ms. L asserted that this move on March 10, 2013 to Arizona was to accept a temporary job because there as not enough work in No Name in the winter. Ms. L did not apply for the 2013 PFD until March 29, 2013. In September of 2013 she claimed that she intends to return to

¹ Exhibit 1, page 1.

² Records of Ms. L’s Alaska employment history are found at Exhibit 12.

Alaska on December 1, 2013.³ She did move back to Alaska in December of 2013, before she filed her 2014 PFD application. Ms. L prepared her own 2013 federal income tax return. On this return, Ms. L claimed a moving expense deduction for her move from Alaska, which included a \$1,500 deduction for moving her household goods.⁴ Ms. L filed a 2013 Arizona Nonresident Personal Income Tax Return.⁵ Based on the evidence in the record, I find that Ms. L moved away from Alaska before she filed her 2013 PFD application under circumstances that were inconsistent with the intent to remain a resident of Alaska.

III. Discussion

To qualify for the 2013 PFD, an applicant must meet the eligibility requirements during all of 2012, the qualifying year for the 2013 PFD, and through the date of application. As applied to Ms. L's application, that means she must have been an Alaska resident on March 29, 2013, the date of her application.⁶ That was more than two weeks after she moved to Arizona. To be an Alaska resident, one must not claim residency in the other state, or be absent under circumstance that are inconsistent with the intent required to remain a resident of Alaska during an absence.⁷

In her request a formal hearing, Ms. L wrote that she believed she should qualify for a 2013 PFD because she had returned to Alaska and had been present in Alaska in 2012, and because her view was that her move to Arizona in 2013 was only for temporary employment.

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Ms. L, has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁸ Ms. L did not show by a preponderance of the evidence that she is eligible to receive her 2013 PFD. Ms. L admitted that she moved away from Alaska on March 10, 2013.

The evidence in the record shows that Ms. L moved to Arizona for employment. The fact that she decided to move back to Alaska does not mean that she maintained her Alaska residency while she was living in Arizona or that she left under circumstances that were consistent with her claim of Alaska residency. Ms. L's claim that her she left No Name, Alaska for temporary work because No Name did not provide enough employment opportunities in the winter is inconsistent

³ Exhibit 2, page 5.

⁴ See Ms. L's 2013 income tax return is found at Exhibit 10. The moving expense deductions are at Exhibit 10 page 5.

⁵ Exhibit 10 page 6.

⁶ Alaska Statute AS 43.23.005(a).

⁷ AS 01.10.055(c).

⁸ Alaska Regulation 15 AAC 05.030(h).

with her spring departure and her December return. Taking her household goods with her is inconsistent with her characterization of the move as temporary. Claiming a moving expense on her tax return is also inconsistent with her assertion that the move was always intended as a temporary move and is one of the reasons that a PFD applicant can be disqualified.⁹

Ms. L's absence from Alaska on the date she filed her 2013 PFD application and the circumstances of her move to Arizona disqualified her. Before she applied for a 2013 PFD, Ms. L moved to Arizona for full-time employment. She admits that she took her household belongings to Arizona when she left, and did not maintain a home in Alaska until she returned. The circumstances of this absence were inconsistent with the intent required to maintain Alaska residency.

IV. Conclusion

Ms. L failed to show by a preponderance of the evidence that she maintained her Alaska residency until she applied for the 2013 PFD. The Division's decision is upheld. Ms. L is not eligible to receive the 2013 PFD.

DATED this 12th day of November, 2014.

By: _____
Mark T. Handley
Administrative Law Judge

⁹ Alaska Regulation 15 AAC 15.23.143(d)(10).

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 _____ day of _____, 2014.

By: _____

Signature

Name

Title

Non-Adoption Options

A. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2014.

By: _____

Signature

Name

Title

B. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

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 _____ day of _____, 2014.

By: _____

Signature

Name

Title

C. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

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 _____ day of _____, 2014.

By: _____

Signature

Name

Title

D. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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 _____ day of _____, 2014.

By: _____

Signature

Name

Title