

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

In the Matter of)	
)	
C T)	OAH No. 14-2336-PFD
)	Agency No. 2014-005-2862
<u>2014 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

C T challenges the division’s denial of his 2014 Permanent Fund Dividend (PFD) application. The division identified five independent grounds for denial, any one of which would preclude him from receiving his 2014 PFD. The evidence received at hearing and in the agency record fails to establish that Mr. T is eligible for a 2014 PFD. Therefore, the decision of the division to deny his application for a 2014 PFD is affirmed.

II. Facts

C T moved to Alaska in 1982. He is married to an Alaskan resident. He and his wife own a home in No Name. She is a music teacher and Mr. T is a right-of-way agent.

Mr. T has a brother, mother, and grandmother in Montana. Growing up in a military family Mr. T had never really known his grandmother, and he wanted to do so before she passed. He also wanted to spend time with his mother. She had been diagnosed with dementia but she still recognized him. He looked for employment in, and ultimately accepted full-time employment with, the State of Montana. In January 2013, he entered into a monthly rental and mailed some of his belongings to Montana. Mr. T’s wife remained in their house in Alaska. According to Mr. T, they had not had “the discussion” about whether she would move to Montana.

The job did not meet his expectations, and in June 2013 Mr. T returned to Alaska, mailing his possessions back to the state. Mr. T was absent from Alaska 157 days in 2013.

He explained:

I fully expected to fulfill the twelve month probation requirements, and that my clear intention was to completely relocate to Montana within 18 months, ideally during the summer of 2014. I have family in northwest Montana, including a brother and sister-in-law, a mother (nearly 80 years old, afflicted with dementia), and a grandmother (103 years old) both of whom reside in a total care assisted

living facility. This move would also be returning me to the state where I lived during the 1970s.¹

The crux of Mr. T's argument is that the 17 weeks he spent in Montana was not "long enough to gain residency in the State of Montana, nor was it long enough to lose my residency in the State of Alaska, which I have had since 1982."²

III. Discussion

At the formal hearing level, the Division asserted five reasons why Mr. T is not eligible for a 2014 PFD:

- 1) he was not a state resident the entire qualifying year;
- 2) he claimed moving expenses on his 2013 Federal income tax return;
- 3) his absence from Alaska was an unallowable absence;
- 4) he maintained his primary residence out of state; and
- 5) he accepted full-time permanent employment in another state.

Mr. T contested each of these grounds for denying his application. The existence of any one of these grounds is an absolute bar to his eligibility for a 2014 PFD.

The first step to being eligible for a PFD is that the applicant must be an Alaska state resident as defined by the PFD program throughout the qualifying year.³ The qualifying year for the 2014 PFD was calendar year 2013.⁴ Residency for purposes of PFD eligibility has a very specific meaning and is subjective, that is, based on a person's intent.⁵

Once a resident of Alaska, the person does not lose residency while absent unless they no longer have the intent to remain in Alaska indefinitely and make it their home.⁶ Mr. T could establish that he did not lose his Alaska residency by proving that it is more likely than not that he intended to return to Alaska to remain indefinitely and make it his home.⁷

Here, when the division asked for further explanation, Mr. T wrote that when he accepted the job he had every intention of remaining in Montana, the state he had called home in the

1 Exh 2 at 3.
2 Exh. 5 at 2.
3 AS 43.23.005(a)(3).
4 AS 43.23.095(6).
5 AS 43.23.095(7).
6 AS 01.10.055(c).
7 AS 43.23.095(7); AS 01.10.055(a).

1970s. He even had a timeline for when he would move all of his items to Montana. He had no such timeline for returning to Alaska to remain indefinitely.

At the February 19, 2015 hearing, Mr. T attempted to distance himself from his damaging written explanation by testifying that he wrote this statement shortly after learning that his application was being questioned and may be denied. He had not thought about what had really happened or why. The sequence of events does not support Mr. T's self-serving explanation. The division requested additional information on May 23, 2014 so it could complete its review of his application.⁸ The only mention of denial was a warning that his application could be denied if he failed to timely provide the information requested. The division denied his application on July 4, 2014.⁹ His appeal was received by the division on July 25, 2014. He corroborated his earlier statement in an October 2014 email to the division:

As I have stated in previous explanations, had I stayed in the State of Montana long enough to claim residency there (and lose my residency in Alaska), as well as complete the 1-year probationary period, I most likely would not return[ed] to Alaska, nor would I have applied for the 2014 PFD (2013 qualifying year).¹⁰

These statements are reliable evidence, in Mr. T's own words, of his intent when he left Alaska for Montana.

Mr. T also attempted to temper the incriminating nature of his written statements by arguing that he had no permanent ties to Montana. He argued that he was on probation and could be terminated at any time. He emphasized that his wife and home were still in Alaska. Mr. T testified that he did not think he would be "severing" his Alaska residency unless and until he either applied for a Montana resident hunting permit (6 months) or he passed probation (12 months). These are all facts to be considered and weighed but they are not determinative. Mr. T's arguments fail to recognize the unique nature of state residency for PFD eligibility.

The most reliable evidence of Mr. T's subjective intent is his written statements confirming that he moved with the intent of obtaining work and permanently relocating. When he engaged in that move to Montana with the intent to stay there, he lost his Alaska residency for purposes of PFD eligibility. When viewed as a whole, the evidence does not establish by a

8 Exhibit 2 at 1.

9 Exh. 3.

10 Exh. 5 at 2.

preponderance of the evidence that Mr. T remained an Alaska state resident when he moved to Montana.

Because Mr. T is not eligible for a 2014 PFD based on residency, it is not necessary to resolve the factual and legal disputes concerning the division's other reasons for denying his application.

IV. Conclusion

Mr. T is not eligible for a 2014 PFD because he was not an Alaska state resident as defined by the PFD rules and regulations throughout the qualifying year, 2013. The decision of the division to deny his 2014 PFD application is affirmed.

DATED: March 24, 2015

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 24th day of April, 2015.

By: *Signed*

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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