

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

In the Matter of )  
 )  
 N S )  
 ) OAH No. 15-0480-PFD  
2014 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

N S, a former Alaska resident, appeals the denial of her 2014 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division found her ineligible for lack of intent to remain an Alaska resident. The Division based this assertion on the following reasons: Ms. S indicated on a jury questionnaire that she was moving out of state, she sold her Alaska home in 2014, and at the time of the 2014 PFD application, she did not demonstrate the intent to remain an Alaska resident.<sup>1</sup> The Division held to its denial in an Informal Appeal Decision for the same reasons.<sup>2</sup>

Ms. S requested a formal hearing, which took place on July 7, 2015. At the hearing, the Division maintained their position from the initial appeal.<sup>3</sup>

Although this is a close case, the denial is reversed because the evidence taken at the hearing showed that Ms. S did not change her intent in the legal sense to a degree that would have severed her Alaska residency prior to applying for the 2014 PFD. Ms. S therefore remained eligible for that dividend.

**II. Facts**

N S was an Alaska resident who became eligible for the PFD in 2008 and remained eligible until this dispute.<sup>4</sup> She currently resides in Maryland, after leaving Alaska and moving there in March of 2014.<sup>5</sup>

Ms. S filed for divorce from her then husband, K S, in September 2013.<sup>6</sup> She and Mr. S put their family residence in No Name up for sale the same month.<sup>7</sup> The sale of the home was finalized

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<sup>1</sup> Ex. 10, p. 1.  
<sup>2</sup> Ex. 17, p. 1.  
<sup>3</sup> Statement of Robert Pearson.  
<sup>4</sup> Ex. 4, p. 2.  
<sup>5</sup> Statement of N S.  
<sup>6</sup> Testimony of N S.  
<sup>7</sup> Testimony of N S.

in January of 2014. Ms. S placed most of her household belongings in storage in No Name.<sup>8</sup> On January 15, 2014, Ms. S stated on a jury questionnaire that she was an Alaska resident but that she was “currently moving out of state.”<sup>9</sup> Ms. S testified that she was advised to put this on the questionnaire by a court official after she explained that she was not sure whether she would be going through with her divorce and moving, because that would “give you six months to decide what was going on.”<sup>10</sup> Ms. S’s testimony about the questionnaire was credible and was not seriously challenged on cross-examination. Notably, she specifically requested on the questionnaire that she be rescheduled for jury service in October or November of 2014.<sup>11</sup>

During the month of February 2014, the Ss attempted to rebuild the relationship and salvage their marriage.<sup>12</sup> Contemporaneous documentation shows that this reconciliation effort continued through at least February 23.<sup>13</sup> It was during this attempted reconciliation, on February 16, 2014, that Ms. S completed her 2014 PFD application. Sometime during the last days of February, Mr. S declared his unwillingness to remain married and the parties continued with the divorce proceedings, which included a hearing on February 26, 2014.<sup>14</sup> The divorce was finalized on April 4, 2014.<sup>15</sup>

Before the finalization of the divorce, Ms. S booked a ticket on March 8—and flew on March 18—to Maryland, permanently leaving Alaska with her children.<sup>16</sup> When Ms. S booked the flight, she had not searched for, nor did she have, employment in Maryland; furthermore, she had not made an effort to locate a permanent residence.<sup>17</sup> The collapse of her reconciliation efforts and the decision to leave seems to have been quite sudden.

### **III. Discussion**

The qualifying year for the 2014 dividend was 2013.<sup>18</sup> In order to qualify for a PFD, the applicant must have been a “state resident” throughout the qualifying year, as well as on the date of application.<sup>19</sup>

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<sup>8</sup> Testimony of N S.

<sup>9</sup> Ex. 6, p. 1.

<sup>10</sup> Testimony of N S (hearing recording at minute 16:00 and 40:00).

<sup>11</sup> Ex. 6, p.1.

<sup>12</sup> Testimony of N S.

<sup>13</sup> *E.g.*, Ex. 12, p. 19.

<sup>14</sup> Ex. 15, p.2.

<sup>15</sup> Ex. 15, p.5.

<sup>16</sup> Ex. 14, p.2.

<sup>17</sup> Statement of N S.

<sup>18</sup> AS 43.23.095(5).

<sup>19</sup> AS 43.23.005(a)(2) and (3).

A person becomes a “state resident” “by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.”<sup>20</sup> Once this is done, “[A]n Alaska resident who is physically present in Alaska will remain a resident until affirmatively deciding to move away from the state at a specific time.”<sup>21</sup> Importantly, the “mere contemplation of the possibility of deciding to leave Alaska permanently does not sever residency.”<sup>22</sup>

The entries a person makes on a jury questionnaire are quite significant as evidence of PFD eligibility, although it is notable that a PFD regulation that once automatically disqualified people who had claimed nonresidence on a jury questionnaire has been repealed.<sup>23</sup> Ms. S, however, would not have fallen afoul even of the old regulation, because she did not claim nonresidence (she stated on the form that she was a resident) but said she was “currently” moving and asked to be rescheduled to a later time, making these entries on advice of a court official after explaining her fluid situation.

At the time she applied, Ms. S was at an uncertain crossroads in her life, where the outcome of an event she did not entirely control would ultimately dictate her intent to remain in Alaska. Her situation was somewhat analogous to that of an Alaskan who graduates and then goes through a period of uncertainty about where he or she will settle, dependent upon whether good employment opportunities come through here or elsewhere. In those situations, with the applicant at a similar crossroads, the department has found that Alaska residency continues until the decision to leave has truly been made.<sup>24</sup>

Ms. S submitted sufficient evidence suggesting her first choice and intent was to remain married in Alaska up until the time of her PFD application. She did not deem the reconciliation impossible until after the filing of the PFD application. Furthermore, Ms. S had not manifested intent to leave Alaska by establishing residency in another state. The sale of the house showed an expectation that the family would break up, but was not an affirmative step toward residency elsewhere, and was consistent with one or both parents staying in Alaska. Ms. S began the process of leaving Alaska by purchasing the airline ticket on March 8, 2014, which was after she had applied for the dividend. Ms. S’s belongings remained in Alaska; she had not sought housing, employment, or other ties in another state. Ms. S’s decision to leave was not an orchestrated and

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<sup>20</sup> AS 01.10.055; 43.23.095(7).

<sup>21</sup> *In re M.B.*, OAH No. 11-0168-PFD (Dept of Revenue 2009) at 2.

<sup>22</sup> *In re E.M.*, OAH No. 08-0655-PFD (Dept of Revenue 2009) at 4.

<sup>23</sup> Former 15 AAC 23.143(d)(16) (repealed 2010).

<sup>24</sup> *In re E.M.*, OAH No. 08-0655-PFD (Dept of Revenue 2009).

deliberate matter, but rather a reaction to circumstances that, in her mind, made staying in Alaska unreasonable.

In short, Ms. S has demonstrated that her intent to remain was sufficiently intact that she was still an Alaska resident on the date of application.

#### **IV. Conclusion**

Because she has disproven the basis advanced for denial of her 2014 Permanent Fund Dividend, N S is entitled to that dividend. The denial is reversed.

DATED this 7th day of November, 2015.

By: Signed  
Christopher Kennedy  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of December, 2015.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Admin. Law Judge  
Title

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