

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 15-0688-PFD
L J, JR)	Agency No. 2014-063-0756
_____)	

DECISION

I. Introduction

L J applied for a 2014 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application. Mr. J appealed and requested a hearing by correspondence. Because he established his residency in Alaska before the start of the qualifying year, Mr. J is eligible for a 2014 PFD.

II. Facts

Mr. J applied for a 2014 PFD on March 31, 2014.¹ In December of 2014 the Division requested additional information concerning his residency.² Mr. J did not respond to that request, and his PFD application was denied on March 6, 2015.³

Mr. J submitted a copy of a jury summons which the Division treated as a request to appeal the denial.⁴ A Request for Informal Appeal was submitted on March 25, 2015.⁵ The Division denied the informal appeal.⁶ In his request for a formal hearing, Mr. J stated that he has been a resident since moving to Alaska in May of 2012.⁷ As proof of residency, he submitted evidence of his May 2012, airline travel to Alaska and a May 6, 2013, eye examination.⁸

The Division did its own additional research and found that the Department of Motor Vehicles (DMV) issued Mr. J a state identification card on August 30, 2012.⁹

III. Discussion

Mr. J is eligible for a PFD if he was a state resident on the date of application, and a state resident during the entire qualifying year.¹⁰ The qualifying year for a 2014 dividend was 2013.¹¹

¹ Exhibit 1.
² Exhibit 3.
³ Exhibit 4.
⁴ Exhibit 5, page 5.
⁵ Exhibit 6.
⁶ Exhibit 7.
⁷ Exhibit 8, page 2.
⁸ Exhibit 8, pages 3 – 8.
⁹ Exhibit 2.

A state resident is someone who is present in the state with the intent to remain indefinitely or, if not present, intends to return to the state and remain indefinitely.¹² A person demonstrates their intent to remain indefinitely by maintaining a principal home in the state for at least 30 days, and by providing any other proof of intent required by law or regulation.¹³

The Division does require additional proof of intent for purposes of PFD eligibility. Specifically, the Division requires an applicant to take at least one step beyond physical presence to establish Alaska residency.¹⁴ Acceptable steps include those listed in 15 AAC 23.173(g).

Mr. J was issued a state identification card by the DMV on August 30, 2012.¹⁵ He could only have received this identification card if he had submitted acceptable proof of his principal residence.¹⁶ Establishing a principal residence in Alaska is acceptable evidence of a person's intent to remain indefinitely.¹⁷ Thus, Mr. J has shown an additional step beyond physical presence.

In its position statement, the Division says that it does not accept a state identification card as an additional step towards establishing residency. It asserts that identification cards are issued by the DMV without asking whether the individual also holds an out-of-state identification card or driver license.¹⁸ Although no evidence was submitted in support of this assertion, it is assumed here that some PFD applicants do obtain an Alaska identification card while holding an out-of-state driver license. This does not change the fact that Mr. J was issued his Alaska identification card. As a prerequisite to obtaining that card, he had to demonstrate to DMV's satisfaction that his principal home was in Alaska. Establishing a principal home in Alaska is an additional step beyond physical presence.¹⁹

While the state identification card is evidence that Mr. J's principal residence is in Alaska, it is not strong evidence. That is because it is relatively easy to have bills or other

¹⁰ AS 43.23.005(a)(2) & (3). While there are other eligibility requirements, these are the only requirements at issue in this appeal.

¹¹ AS 43.23.095(6) (definition of qualifying year).

¹² AS 43.23.095(7) & AS 01.10.055.

¹³ AS 01.10.055(b).

¹⁴ 15 AAC 23.143(b).

¹⁵ Exhibit 2.

¹⁶ 2 AAC 90.420(e) & (m).

¹⁷ 15 AAC 23.173(g)(2).

¹⁸ Position Statement, page 3.

¹⁹ 15 AAC 23.173(g)(2). Mr. J is only required to prove he took an additional step beyond physical presence. He is not required to *disprove* other potentially disqualifying facts such as holding an out-of-state driver license, registering to vote in another state, or obtaining a resident property tax exemption in another state.

correspondence sent to an address that is not one's principal home, and therefore, it is relatively easy to prove a place of residence to DMV. However, Mr. J has been in Alaska since 2012, and there is no evidence that he has maintained residency ties to any other state. Based on the evidence in this case, obtaining the identification card is sufficient to show that Mr. J established his principal residence in Alaska.

The Division also relies on a statement made by Mr. J's mother that he "does not have any residency tie in 2012."²⁰ At the same time, she also stated that he lived with her. The mother's hearsay statement is not given any weight because it is unknown whether Mr. J's mother knows what ties would qualify as a "residency tie." She was apparently not aware that living with her might constitute establishing a principal home in Alaska, which is a residency tie.

IV. Conclusion

In addition to his physical presence in Alaska, Mr. J established his principal residence in Alaska prior to January 1, 2013. He was a resident of Alaska during all of the qualifying year and at the time of his application. Mr. J is eligible to receive a 2014 PFD, and the Division's denial of his application is REVERSED.

Dated this 17th day of September, 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of October, 2015.

By: *Signed* _____
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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

²⁰ Exhibit 11.