

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

In the Matter of)	
)	
F L. M)	OAH No. 15-1486-PFD
<hr style="width:40%; margin-left:0"/>)	Agency No. 2014-062-8091

DECISION AND ORDER

I. Introduction

This case is F M’s appeal of the denial of his application for a 2014 Alaska Permanent Fund Dividend (PFD). Mr. M timely applied for a 2014 PFD. Mr. M’s application was denied by the Permanent Fund Dividend Division (Division) because the Division determined that he had moved from Alaska in 2013. Mr. M requested an informal appeal and was again denied. Mr. M then requested a formal hearing.

The formal hearing was held on January 19, 2016. Administrative Law Judge Mark T. Handley heard the appeal. PFD Appeals Specialist Bethany Thorsteinson represented the Division and filed a position paper. Mr. M did not appear for the hearing. He did not provide a telephone number to contact him for the hearing as instructed in the notice of the hearing sent to his address of record. When his phone number of record with the Division was called at the time set for the hearing there was no answer and the number did not allow a message to be left. The record in this appeal was held open for ten days to allow Mr. M an opportunity to file a written request to reschedule his hearing showing good cause for having missed his scheduled hearing on January 19, 2016. Mr. M did not file a request to reschedule before the record closed on January 29, 2016.

Having reviewed the record and after due deliberation, the Administrative Law Judge concludes that Mr. M does not qualify for a 2014 dividend because the evidence in the record shows that he moved from Alaska in 2013, he was absent in 2013 under circumstances that were inconsistent with the intent to maintain Alaska residency.

II. Facts

Mr. M applied for and received 2012 and 2013 PFDs.¹ Mr. M left Alaska in 2013. On his 2014 PFD application, Mr. M checked the boxes to indicate that he was absent for more than 180 days in 2013 and was not present in Alaska when he filed his 2014 PFD application.² On

¹ Recording of Hearing.
² Exhibit 1.

his 2014 PFD application, Mr. M also reported two absences from Alaska that totaled 184 days.³ Mr. M completed a *Working Out of State Questionnaire* form at the Division's request. On this form, he wrote that he left Alaska left for work in Seattle, WA, and left some household goods with a friend in Alaska. Mr. M provided different absence dates on this form than those provided on his 2014 PFD application.⁴ The Division denied Mr. M's 2014 PFD application based on a determination that he had established his principle home outside Alaska in 2013, when he moved to Washington for employment.⁵

On his request for an informal appeal, Mr. M explained that he travels throughout Alaska for employment reasons and while he sometimes uses an out of state mailing address, he leaves property with friends and family in Alaska to save storage fees.⁶

The Division upheld its denial of Mr. M's 2014 PFD application in an informal appeal decision. Based on Mr. M's failure to provide complete information that the Division had requested regarding his principle home, his out-of-state employment, and his absences from Alaska, and Alaska Department records that showed a two-year absence of any employer reported earnings in Alaska, the Division determined that he was not eligible because he had not maintained his Alaska residency, had obtained full-time permanent employment and established his primary outside Alaska in 2013.⁷

In his request for a formal hearing, Mr. M explained he works in the fishing industry and mostly lives in hostels, with friends or family or in employer provided housing. Mr. M argues that his principle home is in Alaska and he has maintained his Alaska residency because he has always intended to move back and live in Alaska permanently. Mr. M provided a one sentence undated letter from D T in which she wrote that Mr. M has maintained his property at her home in No Name, Alaska since October 30, 2012. Mr. M also provided documentation of his employment applications with Alaska employers.⁸

Prior to the hearing, the Division provided case notes of the Division's interactions with Mr. M. These notes indicate that Mr. M informed the Division on December of 2014 that he had left Alaska to go to Missouri, and was currently North Carolina, but was working for a fishing

³ Exhibit 1, page 2.

⁴ Exhibit 4.

⁵ Exhibits 8 & 9.

⁶ Exhibit 7, page 3.

⁷ Exhibit 8, 10, 11 & 12.

⁸ Exhibit 13.

company in Seattle, and that he worked on a fishing ship but that sometimes goes to No Name, Alaska.⁹

At the hearing, the Division argued that a review of Mr. M's interactions with the Division indicate that he incorrectly believes that he should be eligible for a PFD because he is employed in a fishing vessel that sometimes docks in Alaska, but that he is ineligible because he moved out of Alaska in 2013 and established his primary home outside Alaska and was probably absent more than 180 days in Alaska for reasons that disqualified him from PFD eligibility.¹⁰

Based on the evidence in the record, I find that it is more likely than not that Mr. M moved away from Alaska in 2013, was absent for more than 180 days in 2013 under circumstances that were inconsistent with the intent to remain a resident of Alaska, and that he established his primary home outside the state.¹¹

III. Discussion

To qualify for the 2014 PFD, an applicant must meet the eligibility requirements during all of 2013, the qualifying year for the 2014 PFD, and through the date of application.¹² As applied to Mr. M's application, that means he must have been an Alaska resident for all of 2013 and on the date of his 2014 application. Mr. M was not an Alaska resident on the date of his 2014 PFD application. At that time, he had spent only part of 2013 in Alaska and had moved to Seattle for permanent work. It is clear that he did move back to Alaska after the he left in 2013, which is also the 2014 PFD qualifying year.

A person is not eligible to receive a PFD if at any time during the qualifying year and through the date of application, the applicant has

- (1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed
 - (A) in AS 43.23.008(a)(1) – (3), (9) – (11), or (16); or
 - (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph.¹³

⁹ Exhibit 14.

¹⁰ Recording of Hearing & Exhibit A.

¹¹ Recording of Hearing & Exhibits 1-19.

¹² Alaska Statute AS 43.23.005(a).

¹³ Alaska Regulation 15 AAC 23.143(d).

Returns on ships as part of Mr. M's Seattle employment and his Alaska job search efforts, do not prevent his disqualification for the 2014 PFD. Mr. M's 2013 absences were not consistent with the intent to remain a resident of Alaska, due his having moved for permanent employment. To be an Alaska resident, one must not be absent under circumstance that are inconsistent with the intent required to remain a resident of Alaska during an absence.¹⁴ The fact that Mr. M lived in temporary or employer provided housing, during his absence does not prevent those living arrangements from being his primary home in the absence of having any other home. Storing some personal property in Alaska did not prevent Mr. M from establishing his primary home outside Alaska. The evidence shows that Mr. M employer's provided housing is probably his primary home given the nature of his employment. More importantly, Mr. M was absent for more than 180 days in 2013 for employment and other reasons that are disqualifying.

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Mr. M, has the burden of proving by a preponderance of the evidence that the denial is incorrect.¹⁵ Mr. M did not show by a preponderance of the evidence that he is eligible to receive his 2014 PFD.

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or must only have been absent for one of the reasons listed in AS 43.23.008.¹⁶ Absence for employment is not included on that list. One of the provisions of that list allows an Alaskan to be absent for up to 180 days for any reason consistent with Alaska residency without disqualification.¹⁷ The evidence shows that Mr. M was probably absent more than 180 days in 2013 and he did not show that he was absent for any of the reasons that would prevent such an extended absence from being disqualifying. Mr. M was inconsistent and less than forthcoming in providing information about his absence from Alaska in 2013, but the evidence in the record indicates that he was absent for more than 180 days for employment, travel and visiting relatives. Even if his absence had not resulted in what can only be characterized as a permanent move out of Alaska when he accepted permanent employment based in Seattle, these absences would have been disqualifying.

¹⁴ AS 01.10.055(c).

¹⁵ Alaska Regulation 15 AAC 05.030(h).

¹⁶ AS 43.23.005(a)(6).

¹⁷ AS 43.23.008(a)(17)(A).

Mr. M appeared to be confused about the PFD eligibility requirements in his request for a formal hearing. The extended duration and the fact that employment made his return date indefinite that disqualifies him. Mr. M has not moved back to Alaska permanently yet. Alaska law prevents a PFD applicant from qualifying for an Alaska PFD, a benefit of Alaska residency, if the applicant was absent during the PFD qualifying period under circumstances that are inconsistent with the intent to remain an Alaska resident.¹⁸

IV. Conclusion

Mr. M failed to show by a preponderance of the evidence that he was an Alaska resident for all of 2013. The Division's decision is upheld. Mr. M is not eligible to receive the 2014 PFD.

DATED this 29th day of January, 2016.

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 February, 2016.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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

¹⁸ Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).