

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

In the Matter of	)	
	)	
M J	)	OAH No. 16-0486-PFD
_____	)	Agency No. 2015-047-8236

**DECISION & ORDER**

**I. Introduction**

The Permanent Fund Dividend Division denied M J's 2015 Permanent Fund Dividend (PFD) application because it determined that she did not meet PFD residency requirements. Because Ms. J was not an Alaska resident for the entire qualifying year, and had not previously established residency, the Division's denial is affirmed.

**II. Facts**

The facts are not in dispute. Ms. J came to Alaska on June 17, 2013, when she went to work for No Name Seafood.<sup>1</sup> No Name employed Ms. J for a one month period, mid-June to mid-July 2013. No Name abruptly terminated Ms. J's employment due to lack of work. Ms. J did not have another job. She left Alaska the day her job ended, heading first for Las Vegas, then on to the Philippines. Ms. J was hired by another seafood processor in late November 2013, for work beginning in January 2014. She returned to Alaska in 2014, either on January 8<sup>th</sup> or 9<sup>th</sup>.<sup>2</sup> Ms. J remains seasonally employed at No Name, a seafood processor.

Ms. J timely applied for a 2015 PFD, based on the 2014 qualifying year.<sup>3</sup> The Division denied her application because she was not a resident during the entire qualifying year.<sup>4</sup> Ms. J requested an informal appeal.<sup>5</sup> The Division upheld its denial, again finding that Ms. J did not establish residency before January 1, 2014.<sup>6</sup>

Ms. J requested a formal appeal.<sup>7</sup> The hearing took place on June 7, 2016. PFD Specialist, Pete Scott, presented the Division's position. The Division argued that Ms. J was ineligible for the PFD because she was not a state resident during the entire qualifying year; she

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<sup>1</sup> J testimony.  
<sup>2</sup> Whether Ms. J moved to Alaska on January 8<sup>th</sup> or 9<sup>th</sup> is not germane to the outcome in this case.  
<sup>3</sup> Ex. 1.  
<sup>4</sup> Ex. 3.  
<sup>5</sup> Ex. 4.  
<sup>6</sup> Ex. 6.  
<sup>7</sup> Ex. 7.

did not take at least one step beyond physical presence to establish residency before January 1, 2014; and she did not establish residency in 2013.<sup>8</sup>

Ms. J represented herself. She testified that she intended to remain in Alaska when she moved to the state for the No Name job in 2013. Ms. J asserts that she has been an Alaska resident since June 2013. Ms. J's belief is incorrect for purposes of PFD eligibility.

### **III. Discussion**

Only a state resident throughout the entire qualifying year may be eligible for an Alaska Permanent Fund dividend.<sup>9</sup> Ms. J moved to Alaska on January 8<sup>th</sup>, a week after the beginning of the year. Therefore, unless Ms. J established residency before January 1, 2014, she could not qualify as a resident of Alaska for the *entire* 2014 year. The issue, therefore, is whether Ms. J established residency before January 1, 2014.

A state resident, for PFD purposes, is defined as:

an individual who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055, or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely under the requirements of AS 01.10.055.<sup>10</sup>

Physical presence alone is insufficient to establish residency.<sup>11</sup> An applicant must also take at least one step beyond physical presence in Alaska to establish residency.<sup>12</sup> Further, acts routinely formed by temporary residents are not, by themselves, evidence of residency.<sup>13</sup>

The Department considers all relevant factors when determining whether an individual intends to return and remain in the state indefinitely, including: 1) the length of time an applicant is physically present versus absent from the state; 2) the frequency and duration of voluntary trips to the state during the past five years; 3) whether the person's intent to return and remain is conditioned on events beyond that person's control, and 4) the ties the person has established in the state.<sup>14</sup> An individual may not become a resident while absent from Alaska.<sup>15</sup>

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<sup>8</sup> Division's position statement; Scott testimony.

<sup>9</sup> AS 43.23.005(a)(2)-(3).

<sup>10</sup> AS 43.23.095(7).

<sup>11</sup> 15 AAC 23.143(c).

<sup>12</sup> 15 AAC 23.143(a).

<sup>13</sup> 15 AAC 23.143(a).

<sup>14</sup> As 43.23.008(e).

<sup>15</sup> 15 AAC 23.143(b).

These considerations support the Division's determination that Ms. J did not establish residency in 2013.<sup>16</sup> First, Ms. J lived in the state for a total of one month in 2013. The record contains no evidence that Ms. J was physically present in Alaska before this period. Thus, her time outside the state and her frequency of travel to the state indicate non-resident status.

Second, Ms. J did not establish sufficient ties to Alaska while she was here in 2013. Aside from her month-long employment, the record contains no indication of common ties establishing residency – voter registration, motor vehicle registration, fishing or hunting license, property ownership, etc.<sup>17</sup> For seasonal employees, the Division also considers whether personal goods remain stored in Alaska once employment ends.<sup>18</sup> For example, Ms. J's current employer wrote a letter stating that she leaves her belongings behind when she leaves for vacation.<sup>19</sup> The letter also states that Ms. J plans to stay and work in Alaska. Ms. J did not leave personal items behind when she left in 2013. She did not have a contract to return the following season.

Next, Ms. J's intent to remain was conditioned on an event outside her control – continued employment. When her No Name job ended, her ability to remain in Alaska also ended. Previous decisions have held that an intent to remain that is contingent on a continuing relationship cannot be the basis for PFD eligibility.<sup>20</sup> Likewise, Ms. J's intent to remain, contingent on continued employment, cannot be the basis for PFD eligibility.<sup>21</sup>

Lastly, Ms. J did not take one qualifying step beyond physical presence in 2013 to establish residency. She worked for a month at a seafood processor. This is an act routinely performed by a temporary resident which, without more, does not qualify an applicant for the PFD.<sup>22</sup> People often journey to Alaska with plans to make it home, only to leave and never return.

Overall, Ms. J's general desire or intent to live and work in Alaska is not enough to establish residency from a one month stint at No Name.

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<sup>16</sup> This decision does not address whether Ms. J currently meets PFD residency requirements.

<sup>17</sup> These are common proof of residency examples found in 15 AAC 23.173.

<sup>18</sup> Scott testimony.

<sup>19</sup> Ex. 2, p. 3-4.

<sup>20</sup> See Ex. 10, *In re: L.C.*, OAH No. 10-0164-PFD, (OAH 2010).

<sup>21</sup> This factor would weigh differently now, but in 2013 Ms. J's situation was more akin to a temporary worker than long time seasonal employee.

<sup>22</sup> See Ex. 11, *In re: M.E.B.*, OAH No. 10-1081-PFD (OAH 2010).

**IV. Conclusion**

Ms. J has the burden of proof to establish her PFD qualification.<sup>23</sup> She did not do so. The Division’s decision to deny Ms. J’s 2015 PFD application is affirmed.

DATED: July 11, 2016.

*Signed* \_\_\_\_\_  
Bride Seifert  
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 8<sup>th</sup> day of August, 2016.

By: *Signed* \_\_\_\_\_  
Signature  
Stephen C. Slotnick  
Name  
Administrative Law Judge  
Title

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

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<sup>23</sup> 15 AAC 05.030(h).