

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

In the Matter of	)	
	)	
E D	)	OAH No. 17-0786-PFD
_____	)	Agency No. 2016-055-1426

**DECISION**

**I. Introduction**

E D applied for his 2016 Permanent Fund Dividend (PFD). The division ruled that he was ineligible to receive the 2016 PFD because he failed to maintain his Alaska residency while absent from the state. Mr. D appeals that decision. As explained below, Mr. D has not met his burden of proving the division’s decision was in error. Therefore, the decision to deny Mr. D’s application is affirmed.

**II. Facts and Procedural History**

E D was a long-time Alaska resident who applied for and received permanent fund dividends beginning with the inception of the program in 1982 until 2015—when his “Disabled Application” was denied.<sup>1</sup> His 2016 application—which is the subject of this appeal—was also denied.<sup>2</sup>

According to his 2015 application, Mr. D resided in No Name City 1, Alaska until some time in 2014, when he decided that due to his age and physical condition, it was impractical for him to continue residing at his remote residence.<sup>3</sup> In particular, on March 28, 2014, Mr. D was diagnosed with atrial fibrillation.<sup>4</sup> He had a pacemaker implanted on July 16, 2014.<sup>5</sup> And due to his health, his doctors recommended that he stay in close contact with his providers.<sup>6</sup> Mr. D explained that he receives ongoing medical care for his pacemaker at a Hospital on an Air Force Base, and he rents a room in No Name City 2, California, where he has better access to medical services, transportation, and groceries.<sup>7</sup>

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<sup>1</sup> Ex. 1 at 5; Ex. 8.  
<sup>2</sup> Ex. 1 at 5; Ex. 2 at 1.  
<sup>3</sup> Ex. 8 at 2-3, 7; *see also* Ex. 9.  
<sup>4</sup> Ex. 8 at 6.  
<sup>5</sup> Ex. 8 at 6.  
<sup>6</sup> Ex. 8 at 7.  
<sup>7</sup> Ex. 8 at 3, 7.

Mr. D filed a 2016 PFD Adult Web Application and 2016 Adult Supplemental Schedule on March 24, 2016.<sup>8</sup> Mr. D disclosed that he was not physically in Alaska at the time of filing and that he had been absent from Alaska for medical treatment—“Eye Surgery needed”—for 365 days during 2015.<sup>9</sup> Mr. D provided no information about when his absence from the state would end.<sup>10</sup>

On November 25, 2016, the division asked Mr. D to provide a completed 2016 Adult Certification Form and a completed 2016 Medical Treatment Verification Form.<sup>11</sup> On February 3, 2017, the division denied Mr. D’s 2016 application because he had not provided the requested documentation within 30 days and he did not meet the definition of state resident for PFD purposes.<sup>12</sup> The division advised Mr. D that he could request an Informal Appeal where he would need to provide: proof that he took no actions that would make him ineligible for a dividend; a completed 2016 Adult Certification Form; a completed 2016 Medical Treatment Verification Form; and proof that he is eligible for a 2016 PFD.<sup>13</sup>

Mr. D filed a timely Request for Informal Appeal.<sup>14</sup> In that request, Mr. D explained:

Transportation to my home at No Name City 1 is very difficult and I don’t have the energy to make the monthly trip required to No Name City 3 for survival.

...

It is much more logical to take this room at No Name City 2, [California], where I have access to: Hospital – Commissary and Bus Service for my Heart Condition!!”<sup>15</sup>

On June 7, 2017, the division asked Mr. D to provide the following: (1) Medical Treatment Verification Form for all medical treatment he has received while in California; (2) a signed Signature Page; and (3) a copy of a rental agreement or letter from his landlord for the room or residence he rents in No Name City 2, California.<sup>16</sup> In response, Mr. D provided a Medical Treatment Verification for Calendar Year 2015 signed by Dr. N B,

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<sup>8</sup> Ex. 1 at 1-2.

<sup>9</sup> Ex. 1 at 2-3.

<sup>10</sup> Ex. 1 at 3-4.

<sup>11</sup> Ex. 2 at 1.

<sup>12</sup> Ex. 2 at 1.

<sup>13</sup> Ex. 2 at 2.

<sup>14</sup> Ex. 3 at 8, 11.

<sup>15</sup> Ex. 3 at 9.

<sup>16</sup> Ex. 4 at 1.

certifying that Mr. D began continuous treatment with Dr. B for Congestive Heart Failure with Cardiac Resynchronization Therapy – Defibrillator on February 6, 2015;<sup>17</sup> and a signed 2016 Adult Certification Form signed by Mr. D.<sup>18</sup> Mr. D submitted a handwritten note with his materials: “My body at 83 years does not have the physical energy to survive at my log home at No Name City 1, Alaska.”<sup>19</sup>

The division denied Mr. D’s informal appeal, reasoning that: Mr. D maintained his principal home outside of Alaska while absent during the 2015 qualifying year and before the date of his application; he did not demonstrate an intent to remain an Alaska resident indefinitely at the time he applied for the 2016 dividend; he did not meet the definition of Alaska state resident for purposes of eligibility for the 2016 dividend; and his absence of over 180 days in 2015 was not an allowable absence.<sup>20</sup>

On July 10, 2017, Mr. D, with the assistance of J D, a Social Worker at a Medical Center on an Air Force Base, filed a request for formal hearing by written correspondence.<sup>21</sup> In his request for hearing, Mr. D claimed that he intends to remain an Alaska resident, but medical access in Alaska is a hardship for him.<sup>22</sup> In his position statement for this hearing, Mr. D maintains that he intends to remain an Alaska resident; that he owns property and a home in Alaska; and he is only renting a room in California so that he is close to his medical providers for ongoing medical care.

### **III. Discussion**

To qualify for a permanent fund dividend, a person must be an Alaska resident during the entire qualifying year and at the date of the application.<sup>23</sup> The qualifying year for the 2016 dividend was 2015.<sup>24</sup> A person who establishes residency in Alaska remains a resident during an absence from the state, unless the person establishes or maintains residency in another state, or is absent under circumstances that are inconsistent with the intent to remain in the state indefinitely and to make a home in the state.<sup>25</sup> To prevail here,

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<sup>17</sup> Ex. 4 at 5 (“CHF c̄ CRT – D”).

<sup>18</sup> Ex. 4 at 5-6.

<sup>19</sup> Ex. 4 at 3.

<sup>20</sup> Ex. 5 at 1.

<sup>21</sup> Ex. 6; Ex. 7.

<sup>22</sup> Ex. 6 at 2.

<sup>23</sup> AS 43.23.005(a)(2), (3).

<sup>24</sup> AS 43.23.095(6).

<sup>25</sup> AS 01.10.055.

Mr. D must establish that it is more likely than not that he remained an Alaska resident while absent from the state.<sup>26</sup>

The term “establishes residency” is given a definite and precise meaning under AS 01.10.055(a): presence in Alaska with the intent to remain indefinitely and to make a home in the state. A word or phrase used in one subsection of a statute is generally given the same meaning when repeated elsewhere in another subsection of the same statute. Thus, under AS 01.10.055(c), for Mr. D to establish residency in another state, he must be physically present in that other state with the intent to remain indefinitely. An important element in determining residency is the definite or indefinite nature of a person’s intent to remain in a state. This does not mean that every person who leaves the state must know their precise date of return to retain residency. But people who intend to return to Alaska to remain and make their home can be expected to have a general sense of when they will return, or have their returns contingent on events that can reasonably be expected to occur within an identifiable period of time.

Mr. D presented some evidence of continued ties to Alaska—namely, property in No Name City 1. He also expressed a desire to remain an Alaska resident and suggested that but for his age and physical condition, he would return to his Alaska property if that was feasible. But in determining Mr. D’s residency, it is important not to confuse desire with intent—a person does not intend to do what he is unable to do, no matter how much he wishes to. Although it appears that Mr. D would like to return to Alaska, he cannot say when or, even if, he will be able to return. Instead, the preponderance of the evidence shows that Mr. D has not returned to Alaska since he left in 2014. He maintains a principal home and spent most of his time—indeed all of 2015—in California. And he will probably continue to do so for an indefinite period of time. Accordingly, on the date of his application for a 2016 dividend, Mr. D was living in California under circumstances that are inconsistent with the intent to remain in Alaska indefinitely and with the intent to make a home in Alaska. In other words, Mr. D has established an intent to remain indefinitely in a place other than Alaska and by doing so is no longer a resident of Alaska for purposes of the 2016 PFD.

Because Mr. D does not meet the residency requirement, the question of whether his absence is allowable is not addressed.

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<sup>26</sup> 15 AAC 05.030(h).

**IV. Conclusion**

Mr. D failed to show that it was more likely than not that he was eligible for the 2016 PFD. At the date of his application, Mr. D was not an Alaska resident. Accordingly, the division’s decision to deny Mr. D’s application for a 2016 PFD is affirmed.

Dated: October 16, 2017

*Signed*  
\_\_\_\_\_  
Jessica L. Srader  
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 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 13<sup>th</sup> day of November, 2017.

By: *Signed*  
\_\_\_\_\_  
Signature  
Kathryn L. Kurtz  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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