

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

In the Matter of)	
)	
N C. N SR.)	OAH No. 17-0851-PFD
<hr/>)	Agency No. 2017-005-9288

DECISION

I. Introduction

N N Sr. lived in Alaska for a number of years and most recently received the 2011 Permanent Fund Dividend (PFD). He left the state in either 2012 or 2013, lived with his son in Pennsylvania, then returned to Alaska on or about July 1, 2016.¹ Mr. N timely applied for the 2017 PFD, but the Permanent Fund Dividend Division (Division) denied his application. At Mr. N's request, a formal hearing was held on September 14, 2017. Based on the evidence presented at the hearing, the Division's denial is affirmed, because Mr. N was not an Alaska resident during 2016, the qualifying year for the 2017 dividend.²

II. Facts

The facts of this case are not generally in dispute.³ In his 2010 PFD application, Mr. N apparently listed his residency in Alaska as beginning in December, 2008.⁴ Mr. N obtained Alaska employment, housing and an Alaska ID in 2008. Mr. N never obtained a full Alaska driver's license, but he had a number of instruction permits, the last of which expired on November 20, 2011.⁵ Mr. N received the 2010 and 2011 dividends.⁶ According to his testimony at the hearing, Mr. N left Alaska either in late 2012 or in 2013; he was not sure of the year.⁷ Mr. N testified that he has a pacemaker, suffers from cardiovascular disease, and was feeling ill at that time, and his son invited Mr. N to join him in Pennsylvania. When Mr. N moved to Pennsylvania, he gave away his possessions in Alaska, and while he was gone he did not

¹ Mr. N's 2017 PFD application listed his return to Alaska date as July 1, 2016, however the Division of Public Assistance indicated that Mr. N applied for benefits in Alaska starting in late June 2016, and his Alaska ID was issued on June 27, 2016. Exh 4, p. 3.

² While other possible grounds for denial also exist, e.g., Mr. N's registering to vote in Pennsylvania (15 AAC 23.143(d)(12)), these grounds for denial are not further discussed as they are not necessary to the decision. In fairness to Mr. N, if necessary to a decision, I would find that he did not intend to falsify his dividend application, but simply seemed to have misunderstood the questions asked.

³ Unless otherwise attributed, the facts set out below are based on the exhibits noted and Mr. N's testimony at the hearing.

⁴ This fact is derived from the Division's position statement, but Mr. N's 2010 application was noted submitted as an exhibit.

⁵ Exh. 12.

⁶ Exh. 4, p.1.

⁷ Whether Mr. N left Alaska in 2012 or 2013 is also not clearly established by documents in the record. See exh. 1, p.2; exh. 7, p.2; exh. 9, p.3; exh. 10, p.1.

maintain a home in Alaska. Mr. N testified that he received medical treatment in Pennsylvania, his son took care of him until he became well, he told his son that he wanted to move back to Alaska because he loves Alaska, and he finally returned to Alaska in the summer of 2016.

During his absence from Alaska, Mr. N lived with his son in Pennsylvania. While there he received benefits from the State of Pennsylvania including food stamps, public assistance and Medicaid. He also registered to vote in Pennsylvania, although it is unclear whether he actually voted in Pennsylvania. Mr. N testified that he received excellent medical care, however, he did not present evidence establishing that he obtained continuous medical treatment in Pennsylvania. Mr. N returned to Alaska by either June 27 or July 1, 2016.⁸ He timely applied for the 2017 PFD by electronic filing dated January 5, 2017.⁹

III. Discussion

The Division denied Mr. N's application initially and at the informal appeal level, reasoning that he had severed his residency when he left Alaska, and that he did not meet the definition of being a state resident for PFD purposes for the entirety of calendar year 2016, the qualifying year. In addition, the Division found that Mr. N appeared to have been absent from Alaska for more than 180 days in 2016, had a principal residence outside of Alaska for part of 2016 and had intentionally, recklessly or negligently provided false information on his PFD application.

A person must be an Alaska resident in order to be eligible for a PFD. An "Alaska resident" is someone who is physically present in Alaska with the intent to remain indefinitely, or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of AS 01.10.055. Under AS 01.10.055, a person becomes an Alaska resident by being physically present in the state with the intent to remain indefinitely and to make a home in the state. Having established residency, a person remains a resident while absent unless he establishes or claims residency somewhere else, or performs acts that are inconsistent with the intent to remain a resident.

15 AAC 23.173 provides that an individual claiming an allowable absence from Alaska has the burden of proof to establish that the individual has maintained at all times during the absence the intent to return and remain indefinitely in Alaska. 15 AAC 23.143(d)(1) establishes that an individual "is not eligible" for a PFD if (with certain exceptions not relevant here), during

⁸ Exh. 4, p.3, exh. 9, pp. 3-4.

⁹ Exh.1.

the qualifying year or during the application year up to the date of application, the individual “maintained the individual’s principal home in another state or country.” In the first six months of 2016, Mr. N’s principal home was in Pennsylvania. It is undisputed that he was not maintaining his home in Pennsylvania for one of the allowable reasons listed as an exception in 15 AAC 23.143(d)(1) (e.g., receiving an education, serving in the military, or serving on the staff of an Alaskan member of Congress). In addition, AS 43.23.005(a)(3) provides that to be eligible for a dividend, the individual must have been a state resident during the entire qualifying year – in this case 2016. When Mr. N left Alaska for Pennsylvania in 2012 or 2013, he severed his residency with Alaska, and he did not reestablish his residency until July 2016. Therefore, he is not eligible for a 2017 dividend, because he was not an Alaska resident for the entire qualifying year of 2016.

Mr. N had the burden at the hearing of establishing that he remained an Alaskan resident while living in Pennsylvania, and he did not meet that burden. Consequently, he does not qualify to receive the 2017 dividend.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the application of N N Sr. for a 2017 Permanent Fund Dividend is affirmed.

DATED this 27th day of November, 2017.

By: Signed
Andrew M. Lebo
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 22nd day of December, 2017.

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

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