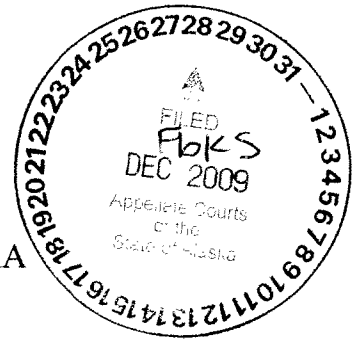


FILE COPY



IN THE SUPREME COURT FOR THE STATE OF ALASKA

RICHARD HELLER)
)
 Appellant,)
)
 v.)
)
 DEPARTMENT OF REVENUE,)
)
 Appellees.)
 _____)



Supreme Court Case No. S-13551
Trial Court No. 4FA-0801193 Civ

ON APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA,
FOURTH JUDICIAL DISTRICT,
HONORABLE DOUGLAS BLANKENSHIP, SUPERIOR COURT JUDGE

APPELLANT'S EXCERPTS OF RECORD (Corrected)
Vol. 1 of 1

Alaska Legal Services Corporation
Attorney for Appellant
Andy Harrington, 8106026
1648 South Cushman Suite 300
Fairbanks AK 99701
Fax 907-456-6359

Excerpts of Record Table of Contents

August 1, 2007 Permanent Fund Dividend Denial Letter 1

August 15, 2007 Request for Informal Appeal 2

October 9, 2007 Informal Appeal Decision 4

October 19, 2007 Request for Formal Hearing (with exhibits)..... 6

January 31, 2008 Office of Admin. Hearings Decision and Order 10

Feb. 27, 2008 Notice of Appeal/Statement of Points/Designation of Transcript..... 13

May 11, 2009 Superior Court Memorandum Decision and Order..... 15

STATE OF ALASKA

Department of Revenue
Permanent Fund Dividend Division
PO Box 110462
Juneau, Alaska 99811-0462

04121

August 01, 2007

RICHARD C HELLER
1501 BLACKBERRY DR
FAIRBANKS, AK 99712-1800

2007
DENIAL LETTER
PC23A

ALN: 07578879

|||||

We determined you are not eligible for this PFD per AS 43.23.008(b) because

- You were not a resident for at least six consecutive months before leaving the state.

We made this determination because

- You said on your application you were absent from Alaska for more than 180 days.
- You said on your application you were not a resident of Alaska for at least 180 days before leaving the state, or you were not a state resident, as defined under the PFD program, for at least 180 days before departing on your absence.

If you disagree with our decision

- You have 30 days from the date of this letter to file a Request for an Informal Appeal by completing and returning the enclosed form.
- To have this denial reversed, show you were a resident of Alaska for at least 180 days before leaving the state for more than 180 days.

If you have any questions about this letter, please contact us as listed below.

Enclosure(s)

20070578879

04121

42

Anchorage: 907-269-0370

E-mail: dividend_information@revenue.state.ak.us
Fairbanks: 907-451-2820 Juneau: 907-465-2326

In State Only: 800-733-8813 2
EXHIBIT
PAGE: 1 OF 1

05651

Alaska Department of Revenue
Permanent Fund Dividend Division

Request for Informal Appeal

This Appeal Request
Will Be Denied
If Received or Postmarked after
AUG 31 2007

Appeal Directions: Indicate the PFD Year for this appeal, and fill in the boxes below for the individual whose PFD application was denied. Use a separate form for each individual.

PFD Year	Name of Individual <i>Richard C. Heller</i>	Date of Birth <i>02 05-67</i>	Social Security Number [REDACTED]
Current Mailing Address <i>4826 Peinceton Dr</i>		Daytime Phone Number <i>(907) 452-2906</i>	
City, State, Zip Code <i>Fairbanks, AK 99709</i>		Home Phone Number <i>(907) 452-2906</i>	

RECEIVED

AUG 15 2007

ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

To file this appeal, you must pay a \$25 fee or qualify for a waiver. Alaska Statute 43.23.015(g) requires us to collect this fee. You must send a check or money order made payable to the PFD Division, in U.S. funds, drawn on a U.S. or foreign bank. Do not send cash.

A request for a waiver of the \$25 fee may be requested if, during the calendar year before the appeal is filed, the individual was a member of a family with an income equal to or less than the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, OR if the appeal is filed by the State of Alaska Department of Health and Social Services (H&SS) or Office of Public Advocacy (OPA) on your behalf.

- Enclosed is the \$25 appeal fee in the form of a personal, certified, or cashier's check, or a money order. **NO CASH.**
- A waiver is requested; there were _____ members in the household. The total household income for the last year was \$ _____.
- A waiver is requested; this appeal is brought by an authorized representative of H&SS or OPA.

What happens when you appeal? PFD Division staff not involved in the denial of the application will review all information on record and anything else that is sent in to determine whether the denial was valid. Generally, staff can make a decision based on this information.

If we need to make contact, should we write or call? Write Call

Late Appeals: Be sure the appeal is postmarked or received on or before the date in the upper right hand corner of this form. Late filed appeals will be denied.

Signature Required: The adult individual, child's sponsor, or the individual's Power of Attorney (POA) must sign this form. The appeal request will not be valid if this form is not signed. If applicable, attach a copy of the POA if not previously submitted.

Under penalty of unsworn falsification, I declare I have examined this request and any accompanying statements and, to the best of my knowledge, they are true and complete. If this request is being prepared by a person other than the individual whose application was denied, this declaration is based on all information known by the representative.

Signature of Adult Individual or Sponsor Requesting Appeal <i>R C Heller</i>	Date <i>8 Aug 07</i>
Name of Power of Attorney or Authorized Representative of H&SS or OPA	<input type="checkbox"/> Valid Copy of POA attached <input type="checkbox"/> Valid Copy of POA previously submitted
Mailing address of Power of Attorney or H&SS or OPA	Phone Number

43

You must also complete the other side of this form

05651

Denial Letter Statements: The letter denying the application listed statements upon which the denial was based.

Is there anything stated in the denial letter that is incorrect? Yes No

If YES, explain in detail what is incorrect and attach any supporting evidence. If NO, it means all the statements in the denial letter are correct.

Attach additional pages if necessary

Other relevant facts that should have been considered by the Division, if none, write "None".

Fact 1: I am in the U.S. Army

Fact 2: I did everything I possibly could to make sure I was a valid Alaskan before I left.

Fact 3: _____

Attach additional pages if there are more relevant facts we should have considered.

Other considerations: Thoroughly explain why the individual is eligible, addressing the statements and the law as stated in the denial letter.

I feel I am eligible because it was not my choice to leave Alaska when I did. I got here in June 05 and was deployed Aug 05 until Dec 06. I would have much rather been in Alaska than in Iraq getting shot at and blown up on a monthly bases. I understand what the regulations say, but the lady I spoke to in the office in Fairbanks compared a college student coming and leaving as the same as me. I don't see snipers and people blowing themselves up on the streets of Alaska. Is this how all the vets that are in the same situation are treated? I will be contacting my congressman also.

Attach additional pages if necessary.

Mall this form along with your \$25 appeal fee and any supporting documents in the enclosed envelope to

Permanent Fund Dividend Division
Dividend Appeals Unit
PO Box 203229
Anchorage, AK 99520-3229

Send additional information or correspondence regarding your appeal to

Permanent Fund Dividend Division
PFD Appeals Unit
PO Box 110467
Juneau, AK 99811

If you have any questions on how to fill out this form please contact one of our Dividend Information Offices by calling Anchorage - (907) 269-0370, Fairbanks - (907) 451-2820, Juneau - (907) 465-2326, or within Alaska - 1-800-733-8813.

or

e-mail: dividend_information@revenue.state.ak.us



ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
DIVIDEND APPEALS UNIT
P.O. Box 110467
Juneau, AK 99811-0467

Richard C. Heller
4826 Princeton Dr.
Fairbanks, AK 99709 3217

2007
Informal Appeal Decision
07578879 8

RE: 2007 PFD Application for Richard C. Heller

You will not receive a 2007 Permanent Fund Dividend. The information below makes you ineligible.

I made this decision because:

Issue A: You did not meet the definition of "state resident" as it applies to the PFD program for at least 6 consecutive months immediately before departing Alaska for more than 180 days absence.

I used the following sources of information:

- Your Request for an Informal Appeal form
- Your application and supporting documentation.

The key fact(s) I found were:

- Fact 1:** We denied your 2007 PFD application because you were not a "state resident", for PFD purposes, at least six consecutive months immediately before departing on an absence that totaled more than 180 days.
- Fact 2:** You stated that your most recent Alaska residency begin on June 17, 2006.
- Fact 3:** You have not obtained an Alaska ID or driver's license.
- Fact 4:** You have not registered to vote in Alaska.
- Fact 5:** You have not registered a vehicle in Alaska.
- Fact 6:** You were absent from Alaska from August 15, 2005 to December 11, 2006 for military assignment which was a total of 345 days during the 2006 calendar year the qualifying period for the 2007 PFD.
- Fact 7:** You were present in Alaska for 59 days prior to departing on absence over 180 days.
- Fact 8:** In order to be eligible for the 2007 dividend, you would have had to have been a resident of Alaska for at least 6 consecutive months immediately before departing Alaska for more than 180 days.

48

EXHIBIT 5
PAGE: 1 OF 4

Richard C. Heller
Informal Conference Decision
Page 2 of 4

The Statutes and Regulations I used in my decision are: (enclosed)

- AS 43.23.008(a),(b), 15AAC 23.143(b), and 15 AAC 23.163(b).

If you disagree with my decision:

- You have 30 days from the date of this letter to file a Request for Formal Hearing appeal by filling out and returning the enclosed form.
- To have this decision reversed, you must provide all of the following:
 - Proof that you met the definition of "state resident" as it applies to the Permanent Fund Dividend program for at least 6 consecutive months immediately before departing Alaska for more than 180 days absence.

Carlota V. Cuanzon

Carlota V. Cuanzon
PFD Technician

October 9, 2007

49

EXHIBIT 5
PAGE: 2 OF 4

05653

ALASKA DEPARTMENT OF REVENUE
 COMMISSIONER'S OFFICE
**PERMANENT FUND DIVIDEND
 REQUEST FOR FORMAL HEARING**
 (Please read ALL instructions before completing this form)

ALASKA DEPARTMENT OF REVENUE
 RECEIVED FORMAL HEARING
 NOV 07 2007

2007-578879

DEADLINE
 This Form Must Be
 Received or Postmarked on or
 Before:
NOV 8 2007

APPLICANT INFORMATION: List the names of all family members whose dividends were denied and who are appealing those denial. Indicate the year(s) that the appeal is covering. *Only the years you list will be considered.* If necessary, attach a list of additional name. **Please note that you cannot appeal for someone whose denial has not been upheld at informal appeal.**

PFD Year(s) 2007	Name of Adult (or Sponsor) Richard C. Heller	Birth Date 02/05/67	Social Security Number [REDACTED]
PFD Year(s)	Name of Adult (or Sponsor)	Birth Date	Social Security Number
PFD Year(s)	Name of Child (or Sponsored Adult)	Birth Date	Social Security Number
PFD Year(s)	Name of Child	Birth Date	Social Security Number
PFD Year(s)	Name of Child	Birth Date	Social Security Number
PFD Year(s)	Name of Child	Birth Date	Social Security Number

Current Mailing Address: 4826 Princeton Dr.
 City, State, Zip Code: [REDACTED]
 Daytime Phone Number: (407) 452-2906
 Home Phone Number: (407) 452-2906

HEARING PREFERENCE: The formal hearing decision will be based on written documents and statements submitted to the Administrative Law Judge by you and by the Permanent Fund Dividend (PFD) Division. You may make your statement in writing, or you may give oral testimony by telephone or at a hearing held in the Office of Administrative Hearings in Juneau or Anchorage. **If you fail to call at the designated time, or fail to appear at a hearing scheduled in Juneau or Anchorage, a decision will be issued on the written evidence submitted by you and the Division.** Check *one* of the boxes below to indicate your preference. If you check more than one box or if you do not check a box, the formal decision will be based on the written evidence submitted to the Office of Administrative Hearings.

- (a) By **written** correspondence ONLY
- (b) By **telephone**
- (c) By an **in person** hearing
 In Juneau
 In Anchorage

SIGNATURE REQUIRED

EACH ADULT APPEALING must sign this form certifying that the facts presented are true. Your request for a formal hearing will be denied if you do not sign this form.

By submitting this Request for Formal Hearing the appellant(s) agree that if, upon further review of this matter, the Division determines that the appellant(s) is / are eligible to receive the dividend, the appellant(s) consent(s) to dismissal of the appeal in this matter if the Division pays the appellant(s) the appropriate dividends.

Under penalty of unsworn falsification, I declare that I have examined this request and any accompanying statements and, to the best of my my knowledge, they are true and complete. If this request was prepared by a person other than the applicant or sponsor, this declaration is based on all information which the representative has knowledge.

Signature of Adult (or Sponsor) [Signature]	Date 19 OCT 2007	Signature of Adult	Date
Name of Representative (If Any)		Signature of Representative	Date
Mailing Address of Representative		Telephone Number of Representative ()	

YOU MUST ALSO COMPLETE THE OTHER SIDE OF THIS FORM

BASIS OF YOUR APPEAL: The Permanent Fund Dividend (PFD) Division has upheld the denial of your application for t reason or reasons stated in the informal appeal decision. Please state on this form why you believe the Division's determinati is incorrect. **YOU MUST COMPLETE EACH SECTION.**

INFORMAL APPEAL DECISION FACTS: You must indicate whether or not each of the facts listed in the informal appe decision is true. If you do not indicate whether or not a fact is true, it will be presumed that you do not dispute the fact. For eac fact that is not true, you must state what is true, and provide documentation or other supporting evidence of the correct fact.

	TRUE	NOT TRUE	IF NOT TRUE, WHAT IS THE CORRECT FACT? Attach any supporting documentation.
FACT #1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
FACT #2	<input type="checkbox"/>	<input checked="" type="checkbox"/>	I got to Alaska June 17, 2005
FACT #3	<input type="checkbox"/>	<input checked="" type="checkbox"/>	I got it in 2005
FACT #4	<input type="checkbox"/>	<input checked="" type="checkbox"/>	I have voted here & registered in 2005.
FACT #5	<input type="checkbox"/>	<input checked="" type="checkbox"/>	I have registered (2) Hours & Fund.
FACT #6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	AT WAR!
FACT #7	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Attach additional pages if necessary

OTHER RELEVANT FACTS THAT SHOULD HAVE BEEN CONSIDERED BY THE DIVISION. IF NONE, WRITE "NONE"

FACT A: That the law needs to be changed for military that have been deployed to a combat zone

FACT B: _____

Attach additional pages if there are more relevant facts that should have been considered by the Division.

ISSUES: You must thoroughly explain why you believe you are eligible based on the facts and the law as stated in your informal appeal decision. Attach additional pages if necessary.

see enclosed letter

56

DEADLINE: This appeal, signed by each adult appealing, must be received or postmarked on or before the date in the upper right hand corner of the other side of this page. Your appeal will be considered timely if it is received or postmarked by that date. **Late appeals will be denied.** Deliver your completed Request for Formal Hearing to any PFD Division Dividend Information Office or mail to:

Permanent Fund Dividend Division
Dividend Appeals Unit
PO Box 110467

EXHIBIT 7
PAGE 2 OF 1

DEPARTMENT OF THE ARMY
U. S. ARMY COMBINED ARMS SUPPORT COMMAND & FORT LEE
FORT LEE, VIRGINIA 23801

2007057837

ORDERS 153-00201

02-Jun-05

HELLER RICHARD
W1D52 CO I TR

[REDACTED] PV2
(W1D52R) FT LEE VA 23801

YOU WILL PROCEED ON PERMANENT CHANGE OF STATION AS SHOWN.

Received FDIO

NOV 07 2007

ASSIGNED TO: USAG FWA REPL DET (W4UJ27)
FT WNWRT AK 99703

REPORTING DATE: 18 JUN 05.

ADDITIONAL INSTRUCTIONS: (A) CONTACT THE INSTALLATION HOUSING OFFICE AT YOUR NEW DUTY STATION TO DETERMINE THE AVAILABILITY OF QUARTERS BEFORE ENTERING INTO ANY HOUSING AGREEMENT. TO OBTAIN INFORMATION ON HOUSING AT YOUR NEW DUTY STATION CONTACT THE MANAGEMENT WEBSITE. THE WEBSITE ADDRESS IS: [HTTP://WWW.HQDA.ARMY.MIL/ASCIM/RELOCATE](http://www.hqda.army.mil/ascim/relocate).

(B) IF YOU SHIP PERSONAL PROPERTY AT GOVERNMENT EXPENSE, CONTACT THE TRANSPORTATION OFFICE OF YOUR DUTY STATION IMMEDIATELY AFTER ARRIVAL TO ARRANGE DELIVERY.

(C) YOU ARE RESPONSIBLE FOR REPORTING TO YOUR NEXT DUTY STATION/SCHOOL IN SATISFACTORY PHYSICAL CONDITION; ABLE TO PASS THE APFT AND MEET WEIGHT STANDARDS.

(D) DEPENDENTS: NO

(E) SHIPMENT OF POV AUTHORIZED.

(F) CONTACT THE LOCAL ARMY RECRUITER UPON ARRIVAL AT YOUR LEAVE LOCATION AND INFORM HIM/HER THAT YOU ARE ON PCS LEAVE.

(G) SOLDIER IS AUTHORIZED LAND TRAVEL REIMBURSEMENT FROM FORT LEE VA TO RICHMOND VA.

(H) OFFICIAL TRAVEL ARRANGEMENTS PURCHASED DIRECTLY FROM AN AIRLINE OR THROUGH A COMMERCIAL TRAVEL AGENCY NOT UNDER CONTRACT TO THE GOVERNMENT ARE NOT REIMBURSABLE IN ANY AMOUNT WHEN TRANSPORTATION IS PERSONALLY PROCURED. REIMBURSEMENT WILL BE LIMITED TO THE ACTUAL COST OF TRANSPORTATION NOT TO EXCEED THE COST THE GOVERNMENT WOULD HAVE SPENT HAD IT ARRANGED THE TRAVEL.

(I) THE INDIVIDUAL POSSESSING THESE ORDERS HAS RECEIVED THE MANDATORY AT/FP AWARENESS TRAINING (LEVEL 1), WITH THE APPROPRIATE THREATS BRIEFING FOR THIS AREA OF TRAVEL, LAW 100-10-2000-10 AND AR 252-13.

(J) IN THE EVENT YOU NEED EMERGENCY ASSISTANCE (LEAVE EXTENSION, CHANGE IN PORT CALL, FAMILY TRAVEL PROBLEMS, ETC.) YOU SHOULD CONTACT THE ARMY TRAVELERS' ASSISTANCE CENTER AT 1-800-582-5552. DO NOT CONTACT YOUR LOSING OR GAINING UNIT.

RECEIVED

NOV 14 2007

ALASKA DEPT OF REVENUE
PFJ DIVISION
DIVIDEND APPEALS

57

STATE OF ALASKA

Voter # 10454257 Political Affiliation U

Name RICHARD C HELLER

Residence Address 4826 PRINCETON DR FAIRBANKS AK

Mailing Address 4826 PRINCETON DR FAIRBANKS AK 99709

Precinct UNIVERSITY WEST 08-145

House	Senate	Judicial	REAA	CRSA
08	D	04		

Polling Place Locator 1-888-383-8683. In the Anchorage area 269-8683

SIGNATURE

RECEIVED FDIU
NOV 07 2007

20070578877

RECEIVED

NOV 14 2007

ALASKA DEPT. OF REVENUE
PFJ DIVISION
DIVIDEND APPEALS

58

EXHIBIT 7
PAGE: 4 OF 6

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

In the Matter of:)
)
RICHARD C. HELLER)
)
2007 Permanent Fund Dividend) OAH No. 07-0677-PFD
) Agency No. 07578879-8

DECISION AND ORDER

I. Introduction

Richard C. Heller was deployed to Alaska with the Stryker Brigade in June of 2005. Two months later he was redeployed to Iraq, where he remained until late 2006. In March of 2007 he timely applied for a 2006 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied his application initially and at the informal appeal level on the basis of that he had not been an Alaska resident for 180 days before leaving on his military-related absence. At Mr. Heller's request, a formal hearing was held on December 27, 2007. The division's denial is affirmed because the law as presently framed does not permit the payment of a 2007 dividend to him.

II. Facts

The facts of this case are not in dispute. The facts set out below are based on Mr. Heller's testimony at the hearing and a small number of exhibits submitted by the division.

Richard Heller was assigned to the Headquarters Company of the 172d Stryker Brigade. He arrived in Alaska under military orders on June 17, 2005, where he promptly registered to vote and obtained an Alaska driver's license.¹ He changed his "State of Legal Residence" in military records to Alaska.² On August 14, 2005 he was deployed to Iraq, remaining there sixteen months and returning to Alaska on December 11 of the following year. In December of 2007 he left the military. He now lives in Fairbanks and intends to remain in Alaska. He plans to enroll in the University of Alaska-Fairbanks in late January of 2008.

III. Discussion

The requirements for PFD eligibility are, in some situations, quite exacting. When they exclude an individual from eligibility, the Department of Revenue has no discretion to pay the

¹ Exhibit 8, p. 2 (Request for Formal Hearing); Exhibit 1, p. 3 (2007 Adult Supplemental Schedule).
² Exhibit 1, p. 6 (2005 Leave and Earnings Statement).

dividend, regardless of the worthiness of the individual, the seeming technicality of the exclusion, or the individual's Alaska connections outside the context of the exclusion. The department is bound not only by the PFD statutes but also by its own regulations.³

In August of 2005, Mr. Heller left Alaska for Iraq and remained there for nearly all of 2006, the qualifying year for the 2007 dividend. It is possible to retain PFD eligibility while living in another state or country during the qualifying year, but eligibility is only retained if one is absent for certain reasons listed in Alaska Statute 43.23.008. One of the permissible reasons is AS 43.23.008(a)(3): while serving in, or accompanying as spouse or dependent someone serving in, the armed forces of the United States. This is the allowable absence on which Mr. Heller would have to rely to maintain eligibility through 2006. However, in order to take advantage of an allowable absence such as this one for a period exceeding 180 days, the applicant must have been "a state resident for at least 180 days immediately before departure from Alaska."⁴ The rule applies to all absences of 180 days or greater beginning fewer than 180 days after residency commenced. There is no exception for involuntary absences. Mr. Heller was a state resident for at most 59 days before beginning the absence.

Although Mr. Heller left Alaska too soon to be eligible for a 2007 dividend, nothing in the record established in this appeal suggests that he severed his underlying Alaska residency when he went to Iraq; only his PFD eligibility appears to have been affected. The record does not presently reveal any impediments to eligibility for 2008 and later dividends.

IV. Conclusion

Richard C. Heller was not an Alaska resident sufficiently in advance of their departure to Iraq to be eligible to claim an allowable absence of more than 180 days while serving in that country. Because his absence exceeded 180 days and encompassed most of the qualifying year for the 2007 dividend, he is not eligible for that dividend.

³ E.g., *Stoshs I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000).

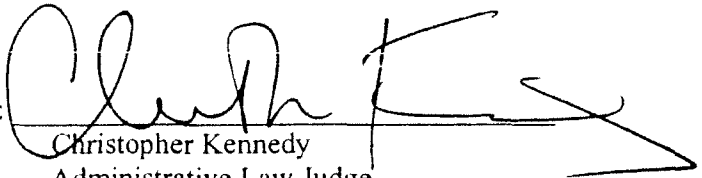
⁴ 15 AAC 23.163.

2

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of Richard C. Heller for a 2007 permanent fund dividend is AFFIRMED.

DATED this 27th day of December, 2007.


By: 
Christopher Kennedy
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 31ST day of January, 2008.

By: 
Signature

Jerry Burnett
Name

Director, Adult Services
Title

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

R. Heller
PFDD Division

Signature Neil Robert Date 1/31/08

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

RICHARD HELLER,)

Appellant,)

vs.)

DEPARTMENT OF REVENUE,)

Appellee.)

CASE NO. 4FA-08-

BY _____

CLERK OF COURT

CIV

2008 FEB 27 PM 3:55

NOTICE OF APPEAL/STATEMENT OF POINTS/DESIGNATION OF TRANSCRIPT

Notice is hereby given that Richard Heller (4826 Princeton Drive, Fairbanks AK 99709, 452-2906) appeals to the Superior Court from the "Decision and Order" dated January 31, 2008, of the above-named agency. A copy of the agency's decision is attached.

STATEMENT OF POINTS

1. The Department misinterpreted and misapplied the applicable statutes and regulations.
2. The Department's decision is in violation of the equal protection, due process, and privileges and immunities clauses of the Fourteenth Amendment of the United States Constitution, and the well-regulated militia clause of the Second Amendment of the United States Constitution.
3. The Department's decision is in violation of the equal rights, protection and opportunities clause of Article I, Section 1; the due process clause of Article I, Section 7; and the well-regulated militia clause of Article 1, Section 19, of the Alaska Constitution.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
1648 CUSHMAN STREET, SUITE 300
FAIRBANKS, ALASKA 99701-6228
(907) 482-5181 OR 456-5401

DESIGNATION OF TRANSCRIPT

Appellant gives notice that he does not intend to have the hearing transcribed and is willing to rely on the electronic record of proceedings.

Dated: 2/22/08

Alaska Legal Services Corporation
Attorney for Appellant

BY: *Andy Harrington*
Andy Harrington, 8106026

I certify that on the 22nd day of February, 2008, copies of this notice and all other documents filed with it were mailed to:

Patrick Galvin, Commissioner
Dept of Revenue
Box 110400
Juneau AK 99811-0400

Talis Colberg, Attorney General
Dept of Law
Box 110300
Juneau AK 99811-0300

Angela Aragon

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
1648 CUSHMAN STREET, SUITE 300
FAIRBANKS, ALASKA 99701-6228
(907) 452-8181 OR 456-5401

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

RICHARD C. HELLER,)
)
Appellant,)
vs.)
)
STATE OF ALASKA,)
DEPARTMENT OF REVENUE)
)
Appellee.)

Case No. 4FA-08-01193 CI (Administrative Appeal)

MEMORANDUM DECISION AND ORDER

I. INTRODUCTION

Richard C. Heller appeals the administrative decision to deny his application for a permanent fund dividend (PFD) to be paid in 2007 for the 2006 qualifying year. He disagrees with the Alaska Department of Revenue's interpretation of AS 43.23.008(b) and argues that the State's interpretation violates his constitutional rights.

II. FACTS

The facts are not in dispute. Richard Heller was assigned to the Headquarters Company of the 172nd Stryker Brigade and arrived in Alaska under military orders on June 17, 2005. He promptly registered to vote and obtained an Alaska driver's license. He also changed his "State of Legal Residence" to Alaska in his military records. On August 14, 2005 he was deployed to Iraq for sixteen months. On December 11, 2006, the unit returned to Alaska. He apparently stopped in Virginia to visit with his family and returned to Alaska in January 2007. He remained in Alaska through 2007 and after

Heller v. State, Dept. of Revenue
4FA-08-01193CI
Page 1 of 18

9

he left the military in December 2007. Since then he has been attending the University of Alaska and paying in-state tuition. He intends to remain in Alaska.

On December 27, 2007, an administrative law judge affirmed the denial of Mr. Heller's application for a 2007 permanent fund dividend (PFD):

It is possible to retain PFD eligibility while living in another state or country during the qualifying year, but eligibility is only retained if one is absent for certain reasons listed in Alaska Statute 43.23.008. One of the permissible reasons is AS 43.23.008(a)(3): while serving in . . . the armed forces of the United State. This is the allowable absence on which Mr. Heller would have to rely to maintain eligibility through 2006. However, in order to take advantage of an allowable absence such as this one for a period exceeding 180 days, the applicant must have been "a state resident for at least 180 days immediately before departure from Alaska." [15 AAC 23.163.] The rule applies to all absences of 180 days or greater beginning fewer than 180 days after residency commenced. There is no exception for involuntary absences. Mr. Heller was a state resident for at most 59 days before beginning the absence.

Although Mr. Heller left Alaska too soon to be eligible for a 2007 dividend, noting in the record established in this appeal suggests that he severed his underlying Alaska residency when he went to Iraq; only his PFD eligibility appears to have been affected. The record does not presently reveal any impediments to eligibility for 2008 and later dividends.¹

Mr. Heller was not eligible for the 2007 PFD because he was absent for most of 2006 and he had been a resident for at most 59 days. He would be eligible for a 2008 dividend because he was present in Alaska for most of 2007, and therefore, needed only 30 days of residency before the beginning of 2007.² His 59 days of residency in 2005 would be sufficient to meet this requirement for the 2008 PFD.

Mr. Heller appealed the Department of Revenue decision denying his application for a 2007 PFD.

¹ *In re Richard C. Heller, 2007 Permanent Fund Dividend*, Office of Admin. Hearings No. 07-0677-PFD, Decision and Order, at 2 (Dec. 27, 2007), adopted by Comm'r. of Revenue, 1/31/2008.

² See AS 43.23.008(a), (b); AS 01.10.055.

Heller v. State, Dept. of Revenue

41A-08-01193CI

Page 2 of 18

III. STANDARD OF REVIEW

There are no disputed factual findings in this case. Issues of statutory interpretation are questions of law to which the court applies its independent judgment.³ The court also applies its independent judgment to questions of constitutional law.⁴

IV. DISCUSSION

A. Interpretation of AS 43.23.008(b)

The basic eligibility requirements for receiving a PFD are listed in AS 43.23.005(a). An individual is eligible to receive a PFD if the individual

- (1) applies to the department;
- (2) is a state resident on the date of application;
- (3) was a state resident during the entire qualifying year;
- (4) has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year;
- (5) is [a citizen of the United States] . . .
- (6) was, at all times during the qualifying year, physically present in the state or if absent was absent only as allowed in AS 43.23.008; and
- (7) was in compliance [with the military selective service registration].⁵

The State Department of Revenue essentially determined that Mr. Heller did not meet the requirement in (6) when the requirements for allowable absences under AS 43.23.008 were applied. Under AS 43.23.008(b) and 15 AAC 23.163, Mr. Heller was not a resident long enough before leaving the state to qualify for an allowable absence during all of the qualifying year, a period exceeding 180 days.

“Qualifying year” means the year immediately preceding January 1 of the year in which a PFD is paid.⁶ The year 2006 was the qualifying year for the 2007 PFD. Under

³ *State, Public Employees' Retirement Bd. v. Morton*, 123 P.3d 986, 988 (Alaska 2005); *Eldridge v. State*, 988 P.2d 101, 103 (Alaska 1999).

⁴ *State, Dept. Revenue v. Andrade*, 23 P.3d 58, 65 (Alaska 2001)

⁵ AS 43.23.005(a). The statute did not change between 2006 and 2009.

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 3 of 18

AS 43.23.095(7), the term "state resident" is defined for purposes of the permanent fund dividend statutes 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 in the state under the requirements of AS 01.10.055.⁷

The purpose of AS 43.23.095(7) is to limit payment of Permanent Fund dividends to permanent residents of the state.⁸ Alaska Statute 01.10.055 provides the general requirements for residency:

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.⁹

Mr. Heller was physically present in Alaska from June 17, 2005 to August 14, 2005.

When he arrived in Alaska, he promptly registered to vote, obtained an Alaska driver's license, and declared Alaska his state of residence in military records. Mr. Heller was

⁶ See AS 43.23.095(6).

⁷ AS 43.23.095(7).

⁸ *Church v. State, Dept. Revenue*, 973 P.2d 1125, 1129 (Alaska 1999); *State, Dept. Revenue v. Casio*, 858 P.2d 621, 625 (Alaska 1993).

⁹ AS 01.10.055.

absent from Alaska in 2006 while deployed in Iraq with the 172nd Striker Brigade, which is based in Alaska. When he left for Iraq, he intended to return to Alaska and remain indefinitely in the state. He fulfilled this intent. He returned to Alaska and continued to serve with the 172nd Stryker Brigade, and when he left the military a year later, he remained in Alaska. He met the general residency requirements under AS 01.10.055 and the definition of "state resident" in AS 43.23.095(7). However, the Department of Revenue found that he did not meet the residency requirement for claiming an allowable absence under AS 43.23.008 and 15 AAC 23.163. The Alaska Supreme Court has stated that "paper ties" to Alaska, e.g., Alaska motor vehicle registration, Alaska voter registration, and Alaska driver's license, are entitled to some weight, but they are not conclusive evidence on the issue of intent to return to Alaska during a long absence.¹⁰

The eligibility requirement in AS 43.23.005(a)(6) requires that the individual was either physically present in the state during the qualifying year, "or, if absent, was absent only as allowed in AS 43.23.008."¹¹ Alaska Statute 43.23.008(a) lists the allowable absences during a qualifying year:

(a) Subject to (b) and (c) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent

...
(3) serving on active duty as a member of the armed forces of the United States . . . ;

...
(17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection . . . ,¹²

¹⁰ *State, Dept. of Revenue v. Wilder*, 929 P.2d 1280, 1282 (Alaska 1997).

¹¹ AS 43.23.005(a)(6).

¹² AS 43.23.008(a) (amended in 2008). Prior to 2008, Subsection (17) was numbered as (16), but the amendments resulting in the renumbering have no relevance to the issues in this case.

Heller v. State, Dept. of Revenue

41A-08-01193C1

Page 5 of 18

Alaska Statute 43.23.008(b) states a precondition for PFD eligibility under an allowable absence that exceeds 180 days:

(b) An individual may not claim an allowable absence under (a)(1) – (16) of this section unless the individual was a resident of the state for at least *six consecutive months immediately before leaving the state.*¹³

Mr. Heller argues that because AS 43.23.008 is addressing absences during the qualifying year, the earliest relevant date for “leaving the state” should be construed as January 1 of the qualifying year.

The State argues that the language in subsection (b) of AS 43.23.008 plainly requires an individual to meet residency requirements at least six months before the date on which the individual leaves the state for an extended absence that includes the qualifying year. The State contends that without the six-month requirement, a soldier or student could be in Alaska for just long enough to get an Alaska driver’s license, register to vote, and articulate an intention to return, and still be eligible for a PFD despite having almost no connection with Alaska. PFD regulation 15 AAC 23.143(b) is consistent with this concern: “An individual may not become a resident while absent from Alaska.”¹⁴

The term “qualifying year” is used in AS 43.23.008(a). This provision focuses upon absences during the qualifying year, but also limits allowable absences during the qualifying year to an “otherwise eligible individual” “[s]ubject to (b) . . .”¹⁵ The phrase “leaving the state” in subsection (b) appears to refer to the beginning of the extended period claimed to be an allowable absence under AS 43.23.008(a). If the legislature had

¹³ AS 43.23.008(b) (emphasis added). Regulation 15 AAC 23.163(b) is similar: “An individual who was absent from Alaska for more than 180 days is not eligible for a dividend if the individual . . . was not a state resident for at least 180 days immediately before departure from Alaska.”

¹⁴ 15 AAC 23.143(b)

¹⁵ AS 43.23.008(a).

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 6 of 18

intended subsection (b) to refer to a date no earlier than January 1 of the "qualifying year," the legislature could be expected to have used the term "qualifying year" again in subsection (h).¹⁶ Instead, the legislature chose to use "before leaving the state."¹⁷ Use of the phrase "before leaving," instead of "January 1 of the qualifying year" as the earliest date by which an individual must be a resident, indicates that the legislature intended the meaning proposed by the State.¹⁸

Although unambiguous statutory language is normally given its ordinary and common meaning, the court may look to legislative history as a guide to construing a statute's words.¹⁹ Both the State and Mr. Heller have cited legislative history. "The plainest the meaning of the statute, the more persuasive any legislative history to the contrary must be."²⁰ The State argues that the language is plain and legislative history is not to the contrary. Mr. Heller contends that the language within the context of AS 43.23.088 as a whole is ambiguous and that legislative history to the contrary is persuasive.

1. Legislative history

The Alaska Legislature clearly has intended durational residency requirements for the PFD program to provide a means for identifying bona fide residents. In 1989, the legislature found that Alaska's high proportion of transients and seasonal workers made

¹⁶ See *In re A.S.*, 740 P.2d 432, 435 (Alaska 1987).

¹⁷ See AS 43.23.008(b).

¹⁸ The corresponding Department of Revenue regulation is similar:

(b) An individual who was absent from Alaska for more than 180 days is not eligible for a dividend if the individual

(1) was not a state resident for at least 180 days immediately before departure from Alaska.

15 AAC 23.163(b).

¹⁹ *Dillingham v. CH2M Hill Northwest*, 873 P.2d 1271, 1276 (Alaska 1994).

²⁰ *Dillingham v. CH2M Hill Northwest*, 873 P.2d at 1276, citing *Peninsula Mfg. Ass'n. v. State*, 817 P.2d 917, 922 (Alaska 1991).

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 7 of 18

identification of people who intend to remain in Alaska indefinitely more difficult than in most other states.²¹ The proposed 1989 legislation contained a two-year residency requirement.

Alaska Statute 43.23.008 separated allowable absences from the general eligibility requirements and was enacted in 1998.²² The 1998 legislation also allowed spouses of eligible individuals to retain eligibility during allowable absences. Legislators still expressed concern, however, over how to limit PFD recipients to bona fide residents with an intent to remain indefinitely.²³ The six-month residency requirement for allowable absences exceeding 180 days was intended to increase the likelihood that individuals claiming a PFD after leaving the state were bona fide residents.²⁴

Mr. Heller argues that a 2003 amendment to AS 43.23.008 supports his interpretation of the residency requirement in AS 43.23.008(b) as it applies to military personnel. The amendment changed the amount of time allowed for an absence during the qualifying year in combination with an absence due to military service from 45 days to 180 days. The change was intended to give residents in the military more time to return to Alaska without losing PFD eligibility.²⁵ The change was also intended to allow a resident to retain eligibility when recalled unexpectedly to active military duty after already being absent from Alaska for another reason that is not inconsistent with

²¹ Ch. 107 § 1(a), SLA 1989; Minutes of House Judiciary Committee Meetings on HB 34, testimony by Rep. Donley (prime sponsor of HB 34), 2/7/1989 and 3/3/1989.

²² Ch. 44 § 5, SLA 1998.

²³ Minutes of Senate Finance Committee, testimony of Sen. Mackie & Rep. Kott, February 1998 (Mackie concerned that allowable absences permitted military families stationed in Alaska for only 1 or 2 years to claim a PFD for several years after leaving Alaska).

²⁴ See Minutes of Senate Finance Committee, testimony of Tom Williams, staff to Sen. Bert Sharp, Co-chair of Sen. Fin. Comm., 2/9/1998.

²⁵ Minutes of Senate Finance Committee, SD 148, 4/17/2003.

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 8 of 18

residency.²⁶ This latter situation could arise when an individual is a member of the reserves or the national guard.

The six-month residency under subsection (b) does not apply an absence of 180 days or less, which is currently found in AS 43.23.008(a)(17). Mr. Heller argues that he should be able to use this 180-day allowable absence in (a)(17) to cover his absence in 2005 from August 15 through December 31, and then count this period toward the six-month residency requirement for an allowable absence under subsection (a)(3) in 2006.²⁷ However, nothing in the statute or the legislative history indicates any intention to permit military individuals to use the 180 days allowed under (a)(17) to meet the residency requirement necessary to claim an allowable absence during the following year. Such an interpretation would render the "before leaving" language in AS 43.23.008(b) meaningless with respect to members of the military. Principles of statutory construction " militate against interpreting a statute in a manner that renders other provisions meaningless."²⁸

2. Conclusion regarding interpretation of AS 43.23.008(b)

Therefore, Mr. Heller has not presented legislative history sufficiently persuasive to overcome the ordinary meaning of the plain language in AS 43.23.008(b). The statute requires six months residence before the date on which the applicant left the state for an extended period, which included more than 180 days of the qualifying year.

Mr. Heller presents a good reason to make an exception to AS 43.23.008(b) for

²⁶ Minutes of Senate Finance Committee, SB 148, 4/17/2003.

²⁷ Appellant's Br. at 15 (Sept. 24, 2008).

²⁸ *Berg v. Popham*, 113 P.3d 604, 609 (Alaska 2005), quoting *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 208 (Alaska 1999) (quoting *M.R.S. v. State*, 897 P.2d 63, 66 (Alaska 1995)).

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 9 of 18

military personnel assigned to a military unit based in Alaska.²⁹ These military individuals are not merely visitors to Alaska, nor do they have any choice over whether they are deployed or the date on which they are deployed to another part of the world with their Alaska-based unit. Further, they can be expected to return to Alaska with their military unit in most cases. The concern that visitors could come to Alaska planning to claim residency after only 30 days and then leave for college or another allowable absence for the entire qualifying year is not applicable to military personnel assigned to an Alaska-based unit. Nonetheless, the creation of such an exception is a matter for the legislature, not the courts.

B. Mr. Heller's constitutional rights

Mr. Heller argues that he was not provided the same benefits as members of the 172nd Stryker Brigade who chose Alaska as their residence and arrived in Alaska six months or more before the August 15, 2005 deployment date. He contends that his equal protection rights have been violated, including his right to travel and establish residence in a new state and be treated equally with other residents of the state. He also claims a violation of his right to bear arms by serving in the military without being penalized by the state. However, the essence of his claim is unequal treatment of new residents, who have been in the state less than six months, compared to longer-term residents.

1. Equal protection under federal law

First, Mr. Heller's case is different from the well-known *Zobel* case. In *Zobel v Williams*, the PFD statute at that time created permanent distinctions between classes of

²⁹ Appellant's Reply, at 11.
Heller v. State, Dept. of Revenue
4FA-08-01193CI
Page 10 of 18

bona fide residents based on how long they had been in Alaska.³⁰ The United States Supreme Court observed that unlike the Alaska statute in *Zobel*, the durational residency requirements previously examined by the Court required new residents to reside in a state for a fixed minimum period to be eligible for certain benefits for the purpose of assuring that only bona fide residents received the benefits.³¹ Alaska Statute 43.23.008(b) is more like these latter durational residency requirements than the statute in *Zobel*.

Two of the United States Supreme Court cases cited by Mr. Heller are more like *Zobel* than the current case. In *Hooper v. Bernalillo County Assessor*,³² veterans who were residents before a certain date received a benefit for which later-arriving veterans were ineligible even though they were bona fide residents.³³ In *Attorney General of New York v. Soto-Lopez*,³⁴ the challenged law gave a preference for civil service jobs to veterans who were New York residents when entering the military.³⁵ Like *Hooper*, a veteran either had the benefit or did not, and the veteran could do nothing to ever change his status no matter how long he lived in New York. Both *Hooper* and *Soto-Lopez* are like *Zobel* in that the state law in question established a permanent distinction between citizens based on past residence; those who did not qualify for the benefit program could do nothing to become qualified. In contrast, 2006 was the only year in which Mr. Heller was ineligible under AS 43.23.008. The statute does not establish permanent distinctions between residents. Mr. Heller will be eligible for future PFDs to the same extent as other Alaska residents for as long as he remains a resident of Alaska and is either present in the

³⁰ *Zobel v. Williams*, 457 U.S. 55, 58, 102 S.Ct. 2309, 2312, 72 L.Ed.2d 672 (1982).

³¹ *Zobel*, 457 U.S. at 58, 102 S.Ct. at 2312.

³² 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985).

³³ *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 617, 105 S.Ct. 2862, 2866, 86 L.Ed.2d 487 (1985).

³⁴ 476 U.S. 898, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986).

³⁵ *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 900, 106 S.Ct. 2317, 2319, 90 L.Ed.2d 899 (1986).

Heller v. State, Dept. of Revenue

4FA-08-01193C1

Page 11 of 18

state or meets the requirements for allowable absences in AS 43.23.008. Mr. Heller may argue that he was permanently disqualified from the 2006 PFD, but not receiving a PFD in a single year is different from being excluded from a program forever because of when an individual became a resident as occurred in *Hooper* and *Soto-Lopez*.

The third United States Supreme Court case cited by Mr. Heller is more like his own case. In *Saenz v. Roe*,³⁶ welfare benefits for needy families were limited during the recipient's first year in California.³⁷ Like the present case, *Saenz* involved the right of newly-arrived residents to enjoy the same benefits as longer-term residents.³⁸ States are permitted to reserve benefits for bona fide residents,³⁹ but new residents must be treated equally to longer-term residents.⁴⁰

The United States Supreme Court has stated that under federal law, "[g]enerally, a law will survive [equal protection] scrutiny if the distinction it makes rationally furthers a legitimate state purpose."⁴¹ The *Saenz* opinion implied that, where the benefit at issue is readily portable to another state, the state may enact a durational residency requirement if it rationally furthers the state purpose of benefiting its bona fide residents as opposed to non-residents.⁴² The PFD is a cash benefit that is readily portable. The durational residency requirement in AS 43.23.008(b) rationally furthers the state objective of benefiting only bona fide residents who are absent from the state for more than 180 days during the qualifying year for specified allowable absences. It is rational for the state to discourage citizens of other states from establishing residency in Alaska for just long

³⁶ 526 U.S. 489, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999).

³⁷ *Saenz v. Roe*, 526 U.S. 489, 492-93, 119 S.Ct. 1518, 1521-22, 143 L.Ed.2d 689 (1999).

³⁸ *Saenz*, 526 U.S. 489, 505, 119 S.Ct. 1518, 1527.

³⁹ *Martinez v. Bynum*, 461 U.S. 321, 328-29, 103 S.Ct. 1838, 1842-43, 75 L.Ed.2d 879 (1983).

⁴⁰ *See Saenz*, 526 U.S. 489, 499-506, 119 S.Ct. 1518, 1524-28.

⁴¹ *Zobel v. Williams*, 457 U.S. 55, 60, 102 S.Ct. 2309, 2313, 72 L.Ed.2d 672 (1982).

⁴² *Saenz*, 526 U.S. 489, 505, 119 S.Ct. 1518, 1527.

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 12 of 18

enough to acquire the readily portable PFD, which can be enjoyed after they return to their original domicile.⁴³ Under this analysis, the State's interpretation of AS 43.23.008(b) does not violate equal protection.

Mr. Heller also contends that the six-month residency requirement infringes upon his right to travel, meaning migrate from one state to another. The United States Supreme Court has stated that in these circumstances the "right to travel analysis refers to little more than a particular application of equal protection analysis."⁴⁴ It is essentially the right to migrate to a new state, establish residency, and be treated equally to the same benefits received by longer term residents of the state.⁴⁵

For most purposes, a person only needs to be an Alaska resident for thirty (30) days.⁴⁶ This includes those who become residents before the PFD qualifying year starts and are present in Alaska for more than 180 days during the qualifying year, and are still Alaska residents when they apply for a PFD.⁴⁷ The six-month residency requirement for a PFD arises when the applicant is present in Alaska for less than 180 days during the qualifying year.⁴⁸ When viewed as a bona fide residence requirement, the six-month requirement simply requires that a person show that he has established his residence in Alaska, and is not merely visiting, before the person can claim an allowable absence for the entire qualifying year while remaining eligible for a PFD for that year he was absent. There is a rational basis for requiring this extra period of residency. A person who would like to claim a PFD without actually living in Alaska might happily spend a summer

⁴³ See *Saenz*, 526 U.S. 489, 505, 119 S.Ct. 1518, 1527.

⁴⁴ *Zobel v. Williams*, 457 U.S. 55, 60 n.6, 102 S.Ct. 2309, 2312 n.6, 72 L.Ed.2d 672 (1982).

⁴⁵ See *Saenz v. Roe*, 526 U.S. 489, 505, 119 S.Ct. 1518, 1527, 143 L.Ed.2d 689 (1999).

⁴⁶ AS 01.10.055.

⁴⁷ AS 43.23.008(a)(17) and AS 43.23.005.

⁴⁸ AS 43.23.008 and AS 43.23.005.

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 13 of 18

month in Alaska and form some paper ties, but is not likely to spend six months in Alaska for the sole purpose of obtaining a PFD. Thus, the requirement of six months residency before leaving provides a useful test for residency among those who leave Alaska for lengthy absences.

The state's six-month residency requirement for a PFD applicant claiming an allowable absence during the qualifying year is rationally related to the state's objective of distributing PFDs only to bona fide permanent residents. "There is substantial uncertainty and potential for abuse inherent in cases where" an applicant has departed on an absence lasting all of the qualifying year only a few weeks after his arrival in Alaska.⁴⁹ Therefore, the six-month residency requirement in AS 43.23.008(b) is more like a bona fide residence requirement than a durational residence requirement. Under the statute, an applicant who is absent from the state for more than six months during the qualifying year must demonstrate bona fide residence by showing he was a resident for six months before leaving Alaska on this absence. An applicant who is present in the state for more than six months during the qualifying year may qualify as a resident with only thirty days of residency before January 1 of the qualifying year. In both situations, a PFD applicant can be eligible for a PFD with little more than six or seven months of physical residence in Alaska by the end of the qualifying year.

Therefore, the six-month residency requirement for PFD applicants claiming an allowable absence of more than six months is rationally related to the State's objective of identifying bona fide residents in order to achieve the legitimate governmental goal of distributing PFDs only to bona fide state residents.

⁴⁹ See *Eldridge*, 988 P 2d at 104 n.8.
Heller v. State, Dept. of Revenue
41A-08-01193CI
Page 14 of 18

2. Equal protection analysis under Alaska law

Alaska applies a sliding scale to determine the level of scrutiny for equal protection analysis.⁵⁰ The applicable standard for a given case is determined by the importance of the individual rights asserted and the degree of suspicion with which the resulting classification scheme is viewed.⁵¹ "Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective."⁵² A PFD represents an economic interest.⁵³ Equal protection claims involving an individual's right in an economic interest are reviewed under minimum scrutiny.⁵⁴ The Alaska Supreme Court has expressly concluded that PFD eligibility requirements warrant only minimum scrutiny.⁵⁵ The minimum level of scrutiny under Alaska law requires the State to show that the "challenged enactment was designed to achieve a legitimate governmental objective, and that the means bear a 'fair and substantial' relationship to the accomplishment of that objective."⁵⁶

The governmental objective of a durational residency requirement for PFD eligibility "is to ensure that only permanent residents receive dividends."⁵⁷ This is a

⁵⁰ *State Dept. Revenue v. Cosio*, 858 P.2d 621, 629 (Alaska 1993).

⁵¹ *Underwood v. State*, 881 P.2d 322, 325 (Alaska 1994), quoting *Cosio*, 858 P.2d at 629.

⁵² *Thomas v. Bailey*, 595 P.2d 1, 14 (Alaska 1979) (Rabinowitz, concurring), quoting *Erickson v. State*, 574 P.2d 1, 12 (Alaska 1978).

⁵³ *Church v. State, Dept. of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999); *State Dept. Revenue v. Cosio*, 858 P.2d 621, 629 (Alaska 1993).

⁵⁴ *Church*, 973 P.2d at 1130; accord *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 944 (Alaska 2000).

⁵⁵ *Cosio*, 858 P.2d at 627.

⁵⁶ *Church*, 973 P.2d at 1130, quoting *Underwood v. State*, 881 P.2d 322, 325 (Alaska 1994); see *Schikora*, 7 P.3d at 945.

⁵⁷ *Church*, 973 P.2d at 1130.

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 15 of 18

legitimate objective,⁵⁸ especially "given that the purpose of the dividend program is to distribute equitably a portion of the state's wealth to Alaskans, to encourage people to stay in Alaska, and to increase citizen involvement in the management of the [permanent] fund."⁵⁹ States are permitted to reserve benefits for bona fide residents.⁶⁰ Additionally, in *Brodigan v. State of Alaska Department of Revenue*, the Alaska Supreme Court stated that "the residency requirement for PFD eligibility may differ from other residency requirements."⁶¹

The means to achieve the objective must bear a "fair and substantial" relationship to the accomplishment of the objective.⁶² However, the fair and substantial relationship test does not require a perfect fit between the means and the governmental objective.⁶³ Requiring an applicant to be a resident of Alaska for at least six months before leaving the state and claiming an allowable absence during most of the subsequent qualifying year seems to bear a fair and substantial relationship to ensuring the dividend goes only to bona fide residents.⁶⁴

In *Eldridge v. State, Department of Revenue*,⁶⁵ the Alaska Supreme Court held that a distinction between Alaskans who worked out of state for the State of Alaska and Alaskans who worked out of state for an Alaskan private employer did not violate the plaintiffs' equal protection rights.⁶⁶ The court explained that under a minimum scrutiny analysis, a court does not determine if a regulation is perfectly fair to every individual,

⁵⁸ *Eldridge v. State, Dept. of Revenue*, 988 P.2d 101, 104 (Alaska 1999).

⁵⁹ *Church*, 973 P.2d at 1130, citing *State, Dept. of Revenue v. Cosio*, 858 P.2d 621, 627 (Alaska 1993).

⁶⁰ *Marrinez v. Bynum*, 461 U.S. 321, 328-29, 103 S.Ct. 1838, 1842-43, 75 L.Ed.2d 879 (1983).

⁶¹ *Brodigan v. State of Alaska Department of Revenue*, 900 P.2d 728, 733 n.12 (Alaska 1995).

⁶² *Underwood v. State*, 881 P.2d 322, 325 (Alaska 1994).

⁶³ *Eldridge v. State, Dept. of Revenue*, 988 P.2d 101, 104 (Alaska 1999); *Church*, 973 P.2d at 1130-31.

⁶⁴ See *Church*, 973 P.2d at 1130-1131.

⁶⁵ 988 P.2d 101 (Alaska 1999).

⁶⁶ *Eldridge v. State, Dept. of Revenue*, 988 P.2d 101, 103 (Alaska 1999).

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 16 of 18

but rather, only if the regulation bears a fair and substantial relationship to a legitimate government purpose.⁶⁷ The Court found there was a fair and substantial relationship between the regulation governing allowable absences and the legitimate objective of preventing fraud and simplifying adjudication procedures for distribution of the PFD.⁶⁸ The same argument could be made here. There need not be a perfect fit between means and ends.⁶⁹

Mr. Heller contends that the argument that a six month durational residency is intended to demonstrate bona fide residency is undercut by the fact that residents who are absent 180 days or less during the qualifying year are not required to be residents for six months before leaving the state.⁷⁰ However, unlike the other allowable absences, the individual claiming an allowable absence for 180 days or less must spend the remainder of the qualifying year in Alaska in order to qualify for a PFD.⁷¹ An individual who claims an allowable absence under the other categories, listed in the current (a)(1)-(16) subsections, can be absent from the state during the entire qualifying year.⁷² A perfect fit between the means and the governmental objective is not required.⁷³ The court concludes that the means of identifying bona fide residents by requiring a six-month residence before leaving the state and claiming an allowable absence bears a "fair and substantial" relationship to the accomplishment of the state's objective of distributing PFDs only to bona fide Alaska residents.⁷⁴

⁶⁷ *Eldridge*, 988 P.2d at 104.

⁶⁸ *Eldridge*, 988 P.2d at 104.

⁶⁹ *Eldridge*, 988 P.2d at 104.

⁷⁰ Appellant's Reply, at 9 (March 6, 2009).

⁷¹ AS 43.23.008(a).

⁷² AS 43.23.008(a).

⁷³ *Eldridge*, 988 P.2d at 104; *Church*, 973 P.2d at 1130-31.

⁷⁴ See *Church*, 973 P.2d at 1130, quoting *Underwood v. State*, 881 P.2d 322, 325 (Alaska 1994); see *Schikora*, 7 P.3d at 945.

Heller v. State, Dept. of Revenue

4FA-08-01193CI

Page 17 of 18

3. Right to travel under Alaska constitution

Under Alaska Constitutional law, as the individual's right at issue becomes more fundamental, the challenged law is subjected to more rigorous scrutiny.⁷⁵ Although the right to migrate to another state may be treated as fundamental in some cases, the Alaska Supreme Court has determined that a residence requirement during the qualifying year for PFD eligibility does not infringe on an individual's right to travel.⁷⁶ In this case, the residence requirement in AS 43.23.008(b) is a bona fide residence requirement which does not violate Mr. Heller's right to migrate to another state and establish residence there.

V. CONCLUSION AND ORDER

For the reasons discussed above, the court orders that the decision by the Alaska Department of Revenue to deny Mr. Heller's application for a 2007 PFD is AFFIRMED.

Dated this 11th day of May, 2009, at Fairbanks, Alaska.

Douglas L. Blankenship
Superior Court Judge

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⁷⁵ Costo, 858 P.2d at 629.

⁷⁶ Church, 973 P.2d at 1130-31; *Brudigan v. Alaska Dept. Revenue*, 900 P.2d 728, 734 n.13 (Alaska 1995).
Heller v. State, Dept. of Revenue

