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

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.

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.

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. Cosio*, 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.

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 AC 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).

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 (b).[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 plainer 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 Mktg. Ass'n. v. State*, 817 P.2d 917, 922 (Alaska 1991).

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, SB 148, 4/17/2003.

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)).

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.

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.Ed2d 899 (1986).
[35] *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 900, 106 S.Ct. 2317, 2319, 90 L.Ed2d 899 (1986).

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.

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.

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.

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.

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. Costo*, 858 P.2d 621, 627 (Alaska 1993).
[60] *Martinez 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).

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.

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

I certify that a copy of the foregoing was distributed via:
MAIL
[ ] U.S. Postal Svc.
[ ] Other
HAND DELIVERY
[ ] Courier Svc.
[ ] Pick Up Bin
[X] Fax AAG, Atty-General
[ ] Other
By: (AW) Date: 5/20/09
Clerk

[75] *Costo*, 858 P.2d at 629.
[76] *Church*, 973 P.2d at 1130-31; *Brodigan v. Alaska Dept. Revenue*, 900 P.2d 728, 734 n.13 (Alaska 1995).