

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.

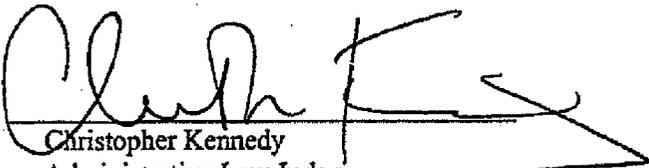
³ *E.g., Stoshs I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000).

⁴ 15 AAC 23.163.

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.

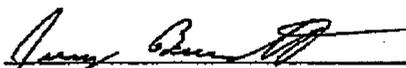
By: 
Christopher Kennedy
Administrative Law Judge

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, Alaska Services
Title

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

R. Heller

PFD Division

Signature Neil Robert Date 1/31/08