

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

In the Matter of)	
S. P. H.)	
)	OAH No. 07-0110-PFD
<u>2006 Permanent Fund Dividend</u>)	Agency No. 06527453-2

DECISION AND ORDER

I. Introduction

S. P. H. timely applied for a 2006 permanent fund dividend (PFD). The PFD division (division) determined that he was ineligible for a 2006 PFD because he had registered to vote in another state during the qualifying year.

The division's denial of Mr. H.'s application is affirmed. The undisputed evidence shows he registered to vote in another state during the qualifying year at a time other than within 30 days of a presidential election. This is a disqualifying act. Although the result is harsh, the division has no discretion but to find Mr. H. ineligible for a dividend.

II. Facts

When Mr. H., a long time Alaskan, signed and dated his 2006 PFD application on February 22, 2006, he indicated that he was not physically in the State on February 22, 2006. Because he was not physically present in Alaska he was required to give a reason for his absence and complete a supplemental schedule. The division provided Mr. H. with a list of reasons why one could be absent from the State on the day they signed their application.¹ The listed options include, among others, attending school as a full- time student and seeking employment or being employed.² Mr. H. identified that he was absent because of work.³ He did not submit the supplemental schedule as requested by the division.

In June 2006, the division reminded Mr. H. that before it could consider his application complete, he would need to submit the previously requested supplemental schedule.⁴ Mr. H. submitted his supplemental schedule which was received by the division on July 3, 2006.⁵ On the supplemental schedule Mr. H. indicated that he had accepted full-time permanent employment in Texas, that he had applied for or received a student loan in another state

¹ Exhibit 1 p. 1.

² *Id.*

³ *Id.*

⁴ Exhibit 2.

⁵ *Id.*

(presumably Texas although he did not provide a copy of the student loan application), and that he had registered to vote in Texas as of October 2005.⁶

The division denied Mr. H.'s application because he registered to vote in a state or country other than Alaska.⁷ Mr. H. informally appealed to the division explaining that he registered to vote because the abortion issue is extremely important to him and he was trying to fulfill his civic obligation.⁸ He also explained that he had to leave the state due to the "downward economy" and that "most jobs are taken by short term residents."⁹ The division considered Mr. H.'s explanation. The division denied his application for a 2006 PFD finding that Mr. H. took actions that made him ineligible: registering to vote in another state, obtaining full time employment in another state or applied for or received a student loan from another state.¹⁰

Mr. H. formally appealed. He again explained why he registered to vote in Texas. He further explained that although registered, he did not vote in Texas.¹¹ He also explained that he had to accept full time employment to support his family while he went to school.¹² Mr. H. wrote that he considers himself a true Alaskan, having lived in the State over 50 years. He continues to own a home in Haines and plans on returning there to reside indefinitely in December 2006.¹³ Mr. H.s submitted his formal appeal on February 21, 2007. It was mailed from Texas with a return address in Texas.¹⁴

III. Discussion

Mr. H. admits that he registered to vote in Texas, accepted full time employment in Texas, and applied for or received a student loan in Texas.¹⁵ In this case, the parties do not disagree about the relevant facts, only about their legal implications.

The law governing this case is 15 AAC 23.143(d), which reads in relevant part:

An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

⁶ Mr. H's supplemental schedule lists October 2006. Upon a review of the file, it is apparent that this is an error and the correct year is 2005. *See* Exhibit 2 p. 1.

⁷ Exhibit 3.

⁸ Exhibit 4 p.2.

⁹ *Id.*

¹⁰ Exhibit 5 p. 2.

¹¹ Exhibit 6 p. 2.

¹² *Id.*

¹³ Exhibit 2 p.1.

¹⁴ Exhibit 6 p. 3.

¹⁵ Exhibit 6 p. 2.

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- (12) registered to vote in another state or country, except if the individual
 - (A) registered to vote in another state within 30 days of a presidential election solely for the purpose of voting in that election and voted in no other election in another state than that for president of the United States;
 - or
 - (B) registered to vote in another country for which the individual was not required to claim residency of the country in order to register to vote;

The Alaska Supreme Court has upheld the authority of the Department of Revenue to implement such “strict liability” regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility.¹⁶ 15 AAC 23.143(d)(12) simply requires the division to ask whether the applicant registered to vote in another state during a specified time period. If the applicant has done so, the division must deny the application without further inquiry into the applicant’s status as a resident. The regulation excludes from PFD eligibility applicants who would otherwise qualify for a PFD. Once adopted, this bright-line rule afforded the division no choice but to find an applicant ineligible unless he or she fits into one of the narrow exceptions.

This regulation does not permit the division to consider Mr. H.’s intent or the reasons why he registered to vote in another state. Mr. H. did not register to vote within 30 days of a presidential election. It is undisputed that Mr. H. registered to vote in Texas. This act makes him ineligible for a 2006 PFD.

Because Mr. H. is ineligible for a 2006 PFD on this basis alone, it is unnecessary to address the other grounds for ineligibility raised by the division.¹⁷

IV. Conclusion

Mr. H. registered to vote in another state during 2005 at a time that was not within 30 days of a presidential election. He therefore is not eligible for the 2006 PFD.

¹⁶ *Church v. State of Alaska Department of Revenue*, 973 P.2d 1125 (Alaska 1999).

¹⁷ Taking full-time employment and applying for a student loan.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of S. P. H. for a 2006 permanent fund dividend is AFFIRMED.

DATED this 26th day of April, 2007.

By: Signed
Rebecca L. Pauli
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 AS 25.27.210 within 30 days after the date of this decision.

DATED this 24th day of May, 2007.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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