

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

In the Matter of)	
)	
M. D.)	
)	OAH No. 08-0108-PFD
<u>2007 Permanent Fund Dividend</u>)	Agency No. 2007-043-2845

DECISION & ORDER

I. Introduction

M. D. timely applied for a 2007 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that he was ineligible, and it denied the application initially and at the informal appeal level. Mr. D. requested a formal hearing designating his mother, C. R. D., to act on his behalf.¹ The formal hearing was held on April 14, 2008; Ms. D. represented Mr. D. and Susan Pollard represented the division.

The division's denial of Mr. D.'s application is affirmed because 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 was a disqualifying act. Although the result is harsh, the Department of Revenue has no discretion but to deny his dividend in the year after he took the disqualifying step.

II. Facts

In 2006, Mr. D., a lifelong Alaskan, left Alaska to attend Humboldt State University in California.² In October 2006, Mr. D. mistakenly registered to vote in California.³ He was walking across campus as part of a voter registration drive and was solicited to register to vote. The registrars were members of the Humboldt Associated Student's Council.⁴ Council members who signed up a minimum number of voters were eligible to attend the California Higher Education Student Summit.⁵ It is unknown if the registrars received any voter registration training.

Mr. D. completed a State of California Voter Registration Form.⁶ He registered to become a permanent absentee voter.⁷ Mr. D. believed he was requesting an Alaska absentee

¹ Alaska General Durable Power of Attorney, Exhibit 7.
² Education Verification Form, Exhibit 2.
³ Notify other County, Exhibit 3; State of California Voter Registration Form, Exhibit 5.
⁴ Exhibit 5 pp. 12-15.
⁵ Exhibit 5, p. 14.
⁶ Exhibit 5, p. 9.

ballot. He was assured by the student registering him that he could receive an Alaska absentee ballot by completing the California voter registration form. He did not request to be registered to vote in California nor did he authorize the cancellation of his Alaska voter's registration. Mr. D. believed he was requesting an Alaska absentee ballot. At no time did he intend to register to vote in California. He has since re-registered to vote in Alaska.

The division denied Mr. D. a 2007 PFD for the sole reason that he had registered to voted in another state, and held to that position through an informal appeal. The division does not dispute that Mr. D., for purposes of a 2007 PFD, retained his Alaska residency.

III. Discussion

The law governing this case is stated in regulation 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

* * * * *

(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 regulation disqualifying an applicant who has registered to vote in another state is absolute. It states that a person who registers to vote in another state between the beginning of the qualifying year and the date of application is not eligible for a dividend, unless the person fits into one of the narrow exceptions. The regulation does not permit the division to weigh this fact against other facts to determine whether a person is an Alaska resident and should therefore qualify for a dividend in spite of having registered to vote in another state. The regulation excludes from PFD eligibility applicants who would otherwise qualify under the statutory eligibility criteria.

In a number of prior decisions, the Alaska Supreme Court has upheld the authority of the Department of Revenue to implement regulations that streamline the PFD program and ease the

⁷ Exhibit 5, p. 9.

administrative burdens of determining eligibility.⁸ In light of those decisions, 15 AAC 23.143(d)(12) is not clearly contrary to law. Therefore, the regulation is entitled to a presumption of legality, and it will be given effect for purposes of this decision.

The regulation simply requires the division to ask whether the applicant registered to vote in another state during the specified time period.⁹ If the applicant has done so, the division must deny the application without further inquiry into the applicant's status as a resident. This bright-line rule affords the Department no choice.

The result of the absolute rule in this case is harsh. Mr. D. never intended to register to vote in California; however, he did. He has made a mistake with important financial consequences. Other Alaskan students around the country made the same mistake, and the Department's response has been evenhanded, disqualifying all.¹⁰

IV. Conclusion

Mr. D. registered to vote in another state during 2006 at a time that was not within 30 days of a presidential election. He, therefore, is not eligible for the 2007 PFD. Nothing in this decision precludes him from eligibility for future PFDs.

V. Order

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

DATED this 15th day of April, 2008.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

⁸ *State, Department of Revenue, Permanent Fund Division v. Cosio*, 858 P.2d 621 (Alaska 1993); *State, Department of Revenue, Permanent Fund Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *Brodigan v. Alaska Department of Revenue*, 900 P.2d 728 (Alaska 1995); *Church v. State, Department of Revenue*, 973 P.2d 1125 (Alaska 1999); *Eldridge v. State, Department of Revenue*, 988 P.2d 101 (Alaska 1999).

⁹ There is a 30-day exception in the regulation. That provision is in the regulation because of Alaska's absentee registration deadline. The drafters of 15 AAC 23.143 realized that an Alaskan who was out of state during the last weeks before a presidential election might want to register to vote, but that it would be impractical or impossible to arrange absentee voting in Alaska within such a short time frame. They therefore allowed such a person to register elsewhere. A person with more than 30 days to work with before the election does have the option to register absentee in Alaska. Hence no exception was needed for such a person, and none was created.

¹⁰ *E.g.*, OAH No. 05-0518-PFD (2005); OAH No. 05-0169-PFD (2005); OAH No. 05-0879-PFD (2005); OAH No. 06-0003-PFD (2006); OAH No. 05-0737-PFD (2006); OAH No. 06-0180-PFD (2006).

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 28th day of May, 2008.

By: Signed
Signature
Jerry Burnett
Name
Director, Admin Services
Title

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