

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

IN THE MATTER OF)
)
 M. M.)
) Case No. OAH 08-0694-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

M. M. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. M. was not eligible, and it denied the application initially and at the informal appeal level. Ms. M. requested a formal hearing by written correspondence only.

Because Ms. M. did not meet her burden of demonstrating that the division’s decision was in error, the decision to deny Ms. M.’s 2007 dividend is affirmed.

II. Facts

Ms. M. is an Alaska resident who was in Tucson attending the University of Arizona during 2006. On her 2007 dividend application, Ms. M. answered “yes” to a question asking whether she had voted in another state during the qualifying year, indicating that she had voted in Arizona.¹ The division investigated by contacting the county recorder in Pima County, Arizona, who provided evidence that Ms. M. had registered to vote in Arizona, but had never actually voted in an Arizona election.

Ms. M. asserts in her formal hearing request that she never intentionally or knowingly registered to vote in Arizona. She states that she bought a car in Arizona, and was required to register it there. Ms. M. states that the Arizona motor vehicle department registered her to vote in that state without her knowledge, and that she was unaware she was registered to vote in Arizona.

The Pima County Recorder provided the division with a copy of a voter registration form that Ms. M. appears to have filled out in handwriting and signed.² While Ms. M.’s signature is not dated, the form appears to have been filed on October 6, 2006.

¹ Exhibit 9, page 1 is a screen print of a page that would provide this information if it were legible. The copy of this page in the record shows the questions, but does not reveal Ms. M.’s answers. Ms. M. has not contradicted the division’s assertion that she stated on her application supplemental schedule that she had voted in another state. The parties agree that Ms. M. did not actually vote in Arizona, regardless of what she stated on her application.

² Exhibit 11, page 1.

The information on the voter registration form does not seem to be entirely of the kind one might confuse with a vehicle registration form. The first question on the form is, “are you registered to vote at another address” with a space to write the previous address. Ms. M. checked the “yes” box and provided her address in Nikiski. Most of the other information on the form is general identifying information, but one box directs the person filling out the form to “Specify Party Preference.” Ms. M. wrote in the name of one of the major political parties in this box. The text block above the signature line reads, “**VOTER DECLARATION** – by signing below, I swear or affirm that the above information is true, that I am a RESIDENT of Arizona, I am NOT a convicted FELON or my civil rights are restored, and I have NOT been adjudicated INCOMPETENT.”

III. Discussion

This case is governed by 15 Alaska Administrative Code 23.143(d), which states:

An individual is not eligible for a dividend if, at 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;

(13) voted in another state's or country's state, country, or local election, except if the individual voted in an election described in this paragraph and the individual was not required to claim residency in order to vote....

It is clear that Ms. M. did not vote in Arizona, and if someone else entered her name on the voter roll without her knowledge it could not be said that she registered to vote. Further, even if a person filled out a voter registration form without understanding the purpose of the form, a question could be raised as to whether that person knowingly and intentionally registered to vote. But in this case it is difficult to reconcile Ms. M.’s statement that she did not knowingly register to vote with the handwritten form that appears to bear her signature, particularly since Ms. M. identified her party affiliation on the form and listed the address in Alaska at which she was previously registered to vote. It is possible that Ms. M. could have explained these apparent inconsistencies if she had appeared in person or by telephone to testify and answer questions about her actions in Arizona, but the only evidence available is the written information in the record. A preponderance of the

evidence available shows that Ms. M. did in fact register to vote in Arizona in 2006, the qualifying year for a 2007 dividend.

IV. Conclusion

Ms. M. did not meet her burden of proving that the division's decision was in error. The decision of the Permanent Fund Dividend Division to deny the application of M. M. for a 2007 permanent fund dividend is AFFIRMED.

Regardless of the language on the Arizona voter registration form, this decision does not constitute a finding that Ms. M. ceased to be an Alaska resident. Nothing in this decision is intended to affect Ms. M.'s eligibility for 2008 and subsequent dividends.

DATED this 9th day of March, 2009.

By: Signed
DALE WHITNEY
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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of April, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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