

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

In the Matter of:)
)
S. J.)
)
2007 Alaska Permanent Fund dividend) OAH No. 09-0011-PFD
) DOR No. 2007-062-7756

DECISION

I. Introduction

S. J. filed a timely application for a 2007 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application on multiple grounds. Ms. J. filed a timely appeal and requested a hearing by correspondence. The case was referred to the Office of Administrative Hearings for decision on the record.

Because Ms. J. registered to vote in another state and voted in that state during the qualifying year, she is ineligible for the 2007 dividend. It is not necessary to address any of the other grounds for denial asserted by the division. The division's decision is affirmed.

II. Facts

S. J. moved to Alaska in 1976, joining her husband, N., who had moved to the state in 1974.¹ Ms. J. applied and received Alaska Permanent Fund dividends every year from the program's inception in 1982 through 2006.²

Through the 2005 dividend year, Ms. J. identified the same street address in Anchorage as her physical address in Alaska.³ In May, 2004, Ms. J. and her husband sold their Anchorage home at that address.⁴ For the 2006 dividend year, and again for the 2007 dividend year, she identified her son's address in Willow as her physical address in Alaska.⁵

Since at least 2005, Ms. J. has owned a house in Florida,⁶ where she and her husband spend the winter months.⁷ On October 5, 2006, Ms. J. registered to vote in Florida; she voted in

¹ Exhibit 7.
² Position Statement at 2.
³ Position Statement at 2.
⁴ Exhibit 10.
⁵ Position Statement at 2.
⁶ Exhibit 11.
⁷ S. J. letter, 2/12/2009.

the 2006 Florida general election and she cancelled her Florida voter registration on June 28, 2007.⁸

III. Discussion

AS 43.23.005(a)(1)-(7) establish the statutory requirements for eligibility for a permanent fund dividend. In addition to these statutory requirements, the division has established other eligibility requirements in 15 AAC 23.143(d).⁹ Of particular relevance in this case is 15 AAC 23.143(d)(12), which states that an individual who, during the qualifying year, registers to vote in another state is ineligible for an Alaska Permanent Fund dividend, with certain exceptions that do not apply to Ms. J..¹⁰

In this case, the qualifying year is 2006. The record establishes, and Ms. J. does not dispute, that she registered to vote in Florida in 2006. Ms. J. is therefore ineligible for the 2007 dividend. Whether she severed her residence¹¹ or is eligible for the 2008 dividend are questions that need not be decided in order to resolve this case.

IV. Conclusion

Ms. J. is ineligible for the 2007 dividend pursuant to 15 AAC 23.143(d)(12). The division's denial of S. J.'s application for a 2007 Alaska Permanent Fund dividend is therefore **AFFIRMED**.

DATED May 8, 2009.

Signed
Andrew M. Hemenway, Administrative Law Judge

⁸ Exhibits 12-13.

⁹ In a number of prior cases, the Alaska Supreme Court has upheld regulations restricting eligibility for a permanent fund dividend beyond the specific statutory requirements of AS 43.23.005(a) and AS 43.23.008. *See Church v. State, Department of Revenue*, 973 P.2d 1125 (Alaska 1999); *Brodigan v. Alaska Department of Revenue*, 900 P.2d 728 (Alaska 1995); *State, Department of Revenue, Permanent Fund Division v. Bradley*, 896 P.2d 237 (Alaska 1995); *State, Department of Revenue, Permanent Fund Division v. Cosio*, 858 P.2d 621 (Alaska 1993). None of those cases addresses 15 AAC 23.143(d)(12), but that regulation is entitled to a presumption that it is constitutional and consistent with applicable statutes.

¹⁰ 15 AAC 23.143(d)(12) states:

(d) 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..., except if the individual

(A) registered to vote in another state within 30 days of a presidential election...; or

(B) registered to vote in another country for which the individual was not required to claim residency...

¹¹ A person who has established Alaska residency retains Alaska residency while absent from the state, "unless during the absence the person establishes or claims residency in another state..., or performs other acts or is absent under circumstances that are inconsistent with the intent...to remain a resident of [Alaska]." A person may remain an Alaska resident even though the person engages in conduct that disqualifies them from eligibility for a particular year's dividend. *See, e.g., In Re D.C.*, OAH No. 07-0653-PFD (February 21, 2008).

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 10th day of June, 2009.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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