

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

IN THE MATTER OF)
)
 K., T. & A. M.)
) Case No. OAH 09-0279-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

K. M. timely applied for 2008 permanent fund dividends for himself and on behalf of his two minor children A. and T. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the application initially and at the informal appeal level. At Mr. M.’s request, a formal hearing was held on June 24, 2009. Mr. M. appeared by telephone. PFD Specialist Peter Scott represented the PFD Division.

Because Mr. M. voted in another state during the qualifying year, he is not eligible for a 2008 dividend. T. and A. are not eligible because they were unallowably absent during the qualifying year.

II. Facts

Mr. M. serves on active duty in the Coast Guard and is currently stationed in New Jersey. On the supplemental schedule for his 2008 application, Mr. M. stated that he had registered to vote in New Jersey on June 25, 2007. In his informal appeal request, Mr. M. stated that his earlier statement was an error, and that he was registered to vote in Alaska. He stated that June 25, 2007, was the date he and his wife sold their house in Alaska. The division affirmed its decision at the informal conference level based on a telephone conversation with Mr. M.’s wife, who had called to state that Mr. M. had been automatically registered to vote in New Jersey because he used a New Jersey address and did not indicate that he was a member of the military on a New Jersey Department of Motor Vehicles form.

In his formal hearing request, Mr. M. adamantly denies that he ever registered to vote in New Jersey. He states that he bought a house in New Jersey, which required him to spend two hours signing paperwork, and he bought a car. When he bought the car, the dealer required him to register the vehicle in New Jersey because he did not have a physical mailing address in Alaska. Mr. M. speculated that because of one these transactions the State of New Jersey assumed that he was a resident and registered him to vote without his knowledge.

Before the hearing, the division contacted the Ocean County Board of Elections in New Jersey to determine whether Mr. M. had registered to vote in the state. The board provided a copy of a one-page document entitled “New Jersey Voter Registration Application” in large bold letters at the top. The form was for use only to register to vote; it is not a form that would also be used to register a vehicle or to pay property tax. The form had been filled out in handwriting with Mr. M.’s identifying information. The board had redacted the signature with a marker pen, but certified that the signature appeared similar to the signature Mr. M. used when he voted in the state’s primary election, which raised another issue.

At the hearing, Mr. M. testified that while he did not necessarily challenge the board’s conclusion that the signature was genuine, he stated that the handwriting in the rest of the form was not his. Mr. M. stated that he recognized the handwriting and was certain that it was his wife’s. Mr. M. was credible in his testimony that, while he may have actually signed the form, he honestly did not remember ever having seen it before. Upon questioning Mr. M. testified that around the time of his registration to vote, he had purchased a car from a dealer in New Jersey. Mr. M. testified that while he was in the showroom office talking to the dealer, his wife filled out all the forms to purchase and register the car and Mr. M. signed them. It is more likely than not that Mr. M.’s wife filled out the voter registration form at that time, and Mr. M. signed it without reading the form, assuming that it was related to buying or registering the car.

Mr. M. testified that “I did during the February primary go to the, go in to the local office and basically, and did something during the primary election.” Mr. M. indicated that he viewed the party primary as an intra-party matter and did not think a person had to be registered to vote in a state to participate. In fact, at the same time Mr. M. was also registered to vote in Alaska, and he did actually vote absentee in subsequent elections, not realizing that he was registered in two states. The evidence does show it is more likely than not that Mr. M. signed in as a registered voter and voted in a party primary in New Jersey.

III. Discussion

Regardless of whether they meet eligibility criteria such as residency, applicants will not be eligible for a permanent dividend if during the qualifying year the applicant registered to vote in another state, or actually voted in another state’s state or local election.¹ Mr. M. registered to vote

¹ 15 AAC 23.143(d)(12)-(13). Exceptions to these rules exist when a person registers to vote in another state within 30 days of a presidential election for the sole purpose of voting in that election, or when a person is not required to claim residency in order to vote.

in another state and voted in another state's election. An issue might be raised as to whether Mr. M.'s signature on the registration form constituted a knowing registration, in spite of the form's self-evident nature. But while he may not have considered the import and consequences of the act, it appears that Mr. M. did know that he was voting in another state's primary election during the qualifying year, and he did so as a registered voter in New Jersey. Under these circumstances, Mr. M. cannot be found eligible for a 2008 permanent fund dividend.

In order to qualify for a dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only absent as allowed by AS 43.23.008. An absence to accompany an eligible person on active duty in the armed forces as the member's minor child is an allowable absence under AS 43.23.008(a)(3). T. and A. were absent for the entire qualifying year. Although they were accompanying Mr. M. while he was on active duty, Mr. M. is not an eligible applicant for 2008. Because T.'s and A.'s absences do not fall under any other provision for allowable absences, they are also not eligible for 2008 dividends.

While the applicants are not eligible for 2008 dividends, the basis for this determination is limited to actions in 2007, the qualifying year for 2008 dividends. These actions are not determinative of residency or any other qualification criteria, and nothing in this decision is intended to affect the applicants' eligibility for 2009 or subsequent dividends.

IV. Conclusion

Mr. M. voted in another state's election during the qualifying year and is therefore not eligible for a 2008 dividend. T. and A. were unallowably absent during the qualifying year and are therefore ineligible for 2008 dividends.

The decision of the Permanent Fund Dividend Division to deny the applications of K., T., and A. M. for 2008 permanent fund dividends is AFFIRMED.

DATED this 4th day of September, 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 5th day of October, 2009.

By: Terry L. Thurbon for
Signature
Dale A. Whitney
Name
Administrative Law Judge
Title

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