

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

In the Matter of	)	
	)	
D. A. A.	)	
	)	OAH No. 09-0387-PFD
<u>2008 Permanent Fund Dividend</u>	)	Agency No. 2008-05-9292

**DECISION**

**I. Introduction**

D. A. timely applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“division”) determined that she was ineligible and denied her application initially and at the informal appeal level. Ms. A. requested a formal hearing by correspondence. The division’s denial is affirmed because Ms. A. registered to vote in another state during the qualifying time period for the 2008 dividend.

**II. Facts**

Ms. A. is originally from New Mexico.<sup>1</sup> She first came to Alaska on February 15, 2006, in order to visit and help her daughter, V. V., with medical issues while stationed at Elmendorf Air Force Base. At first Ms. A. stayed with her daughter in off-base housing, but then undertook a series of moves in and around Anchorage. At the same time, she was employed as a live-in nanny and exchanged day care services for rent.<sup>2</sup>

In 2008, Ms. A.'s daughter completed her enlistment in the Air Force and left Alaska for employment in Twenty Nine Palms, California. On June 6, 2008, Ms. A. went to California to assist her daughter with a newborn child.<sup>3</sup> As had been the situation in Alaska, Ms. A. initially stayed with her daughter and then some time later moved to a series of small rental apartments.<sup>4</sup> While she was in California, Ms. A. registered to vote in that state on July 21, 2008,<sup>5</sup> and she voted in the general election on November 3, 2008.<sup>6</sup> After assisting her daughter for approximately nine months, Ms. A. returned to Anchorage on February 3, 2009.<sup>7</sup>

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<sup>1</sup> Exh. 3 at pg. 4.

<sup>2</sup> Exh. 3 at pg. 3.

<sup>3</sup> Exh. 3 at pg. 1.

<sup>4</sup> Exh. 3 at pg. 2.

<sup>5</sup> Exh. 3 at pg. 5.

<sup>6</sup> Exh. 8 at pg. 1.

<sup>7</sup> Exh. 5 at pg. 2. Ms. A.'s statement indicates she was in California from June 10, 2008 through February 3, 2008, an obvious error because the return date precedes the departure date. In another statement on the same page of the exhibit, Ms. A. stated she returned to Alaska in February 2009.

Ms. A. applied for the 2008 permanent fund dividend on a paper application she signed on March 3, 2008.<sup>8</sup> On September 5, 2008, the division sent Ms. A. a letter indicating it could not finish processing the 2008 PFD application without supplemental information. Apparently it was her first PFD application so the division requested that in addition to the supplemental schedule form she also provide an original birth certificate, passport or naturalization papers.<sup>9</sup> Ms. A. signed the supplemental schedule on September 12, 2008, and returned to the division, where it was received on September 17, 2008.<sup>10</sup>

On January 2, 2009, the division denied Ms. A.'s application for a 2008 permanent fund dividend because during the qualifying period for the dividend, she maintained a principal home outside of Alaska; accepted full-time permanent employment outside of Alaska; claimed residency outside of Alaska in a court proceeding or affidavit; registered to vote outside of Alaska; and obtained a benefit as the result of establishing or maintaining a claim of residency outside of Alaska.<sup>11</sup>

Ms. A. requested an informal appeal on February 17, 2009. She asserted that she resided in Alaska from February 2006 through June 2008; she did not claim permanent residency in California but was there temporarily in order to help her daughter from June 10, 2008 through February 3, 2009; and she was now back in Alaska.<sup>12</sup>

On June 30, 2009, the division issued an Informal Appeal Decision affirming the earlier denial of Ms. A.'s application for a 2008 PFD. Ms. A. appealed on July 20, 2009 and requested a formal hearing by correspondence. Ms. A.'s appeal claimed that she resided in Alaska for two years before she went to California to help her daughter and she now resides in Alaska, so she should be eligible for a 2008 permanent fund dividend.<sup>13</sup>

In its position statement, the division's representative indicated he had a lengthy telephone interview with Ms. A. on August 25, 2009, and as a result of this telephone call, suggested that most of the reasons for the denial of Ms. A.'s 2008 permanent fund dividend were now moot because she had clarified her original answers. Specifically, the division stated that Ms. A.'s employment in California appears to have been a temporary childcare arrangement in

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<sup>8</sup> Exh. 1 at pg. 1.

<sup>9</sup> Exh. 2 at pg. 1.

<sup>10</sup> Exh. 3.

<sup>11</sup> Exh. 4 at pg. 1.

<sup>12</sup> Exh. 5 at pg. 2. In this and later statements, Ms. A. recited June 10, 2008, as the date she went to California, which is slightly different than June 6, 2008, the date she gave on her supplemental schedule.

<sup>13</sup> Exh. 7 at pg. 2.

which she provided daycare for her grandson and another neighbor's child.<sup>14</sup> Similarly, the division said Ms. A. stated she had not been involved in court proceedings in California and that the benefits she applied for were the California equivalent to Medicaid. Essentially, the division abandoned all but one of its reasons for denying Ms. A.'s application for a 2008 permanent fund dividend – that before her application was considered complete, she registered to vote in California on July 21, 2008. The division asserts that registering to vote more than 90 days in advance of the 2008 presidential election was an action inconsistent with Alaska residency, and on that basis, Ms. A. is not eligible for a 2008 permanent fund dividend.<sup>15</sup>

Ms. A. did not submit any documents in response to the division's position statement.

### III. Discussion

The qualifying year for the 2008 PFD is 2007.<sup>16</sup> To be eligible for a permanent fund dividend, a person must be a state resident during the entire qualifying year and on the date of application.<sup>17</sup> 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

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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,<sup>[18]</sup>

The regulation disqualifying an applicant who has registered to vote in another state is absolute. It states that a person who, intentionally or unintentionally, registers to vote in another state between the beginning of the qualifying year and the date his or her application is complete

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<sup>14</sup> Division Position Statement at pg. 2.

<sup>15</sup> *Id.* at pg. 3.

<sup>16</sup> AS 43.23.095(6).

<sup>17</sup> AS 43.23.005(a)(2)-(3) (emphasis added).

<sup>18</sup> Emphasis added.

is not eligible for a dividend, unless the person fits into one of the narrow exceptions, not applicable here.

The division received a paper application from Ms. A. before the March 31 deadline. Ms. A. did not, however follow the directions on the application form to complete a supplemental schedule and provide additional necessary information. Ms. A. subsequently went to California to help her daughter. While there temporarily, Ms. A. registered to vote in California on July 21, 2008. Ms. A. did not submit a supplemental schedule with the additional information necessary to determine her eligibility for a 2008 PFD until September 17, 2008, after she had registered to vote in California.

The significance of the date Ms. A. submitted her supplemental schedule is found in one of the PFD regulations, 15 AAC 23.993(b), which reads in part:

For purposes of AS 43.23.005(a) and this chapter, “date of application” means the date on which an application for a dividend that was timely filed is complete; in this subsection, an application is

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“complete” if it provides all information that is required by AS 43.23 and this chapter, including supplemental or additional information required by or requested under 15 AAC 23.173, that supports the applicant’s claim of residence, physical presence in the state, and eligibility for the dividend.

The division’s regulation, 15 AAC 23.993(b), establishes that the “date of application” is not the day the person submits an application, but rather it is the last day on which a person submits necessary supporting information.<sup>19</sup> Ms. A. did not submit her supplemental schedule until September 17, 2008, so under the above regulation, September 17, 2008 was the date of Ms. A.’s application. She is therefore not eligible for a 2008 PFD because prior to the date her 2008 application was considered complete she registered to vote in another state more than 30 days before a presidential election, which, as discussed above, is a disqualifying act under 15 AAC 23.143(d).

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<sup>19</sup> 15 AAC 23.993(b) was amended in 2009, but it is the version of the regulation that is discussed in this decision that applies in Ms. A.’s appeal.

#### IV. Conclusion

D. A. A. registered to vote in another state before her 2008 application was considered complete and more than 30 days before a presidential election. She therefore is not eligible for the 2008 PFD and the decision of the division to deny her application is AFFIRMED.

DATED this 2<sup>nd</sup> day of November, 2009.

By: Signed  
Kay L. Howard  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 15<sup>th</sup> day of December 2009.

By: Signed  
Signature  
Virginia Blaisdell  
Name  
Director, Administrative Services Division  
Title

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