

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

IN THE MATTER OF)
)
 R. O.)
) Case No. OAH 09-0502-PFD
)
2009 Permanent Fund Dividend)

DECISION

I. Introduction

R. O. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. O. was not eligible, and it denied the application initially and at the informal appeal level. Mr. O. requested a formal hearing by written correspondence.

Mr. O. registered to vote in another state during the qualifying year, an act that makes him ineligible for a dividend. The division was correctly applying the law when it made the decision to deny Mr. O.’s application for a 2009 dividend.

II. Facts

Mr. O. is a long-time Alaskan who grew up in the state. During his first year in college in Nebraska, Mr. O. registered to vote during an on-campus voter registration drive. Having only recently attained the age of adulthood, this was Mr. O.’s first experience with voting. It appears that Mr. O. was principally interested in the national election, not local Nebraska issues. Mr. O. did not realize that registering to vote in another state could affect his eligibility for a permanent fund dividend. It appears that, as a first-time voter, Mr. O. was not aware that there was a way for him to register to vote in Alaska and to vote as an absentee. Mr. O. has since registered to vote in Alaska.

There does not appear to be any dispute that Mr. O. has remained an Alaska resident at all times.¹ Mr. O.’s absence from Alaska was for the purpose of obtaining postsecondary education on a full-time basis, an allowable absence under AS 43.23.008. Mr. O. does not own any real property outside of Alaska, he has not registered a vehicle out of state, he has maintained an Alaska driver’s

¹ The division has cited an internal policy providing guidelines to staff for making initial residency determinations for students who have registered to vote in other states. Because a person’s residency is based on statutory standards, internal policy guidelines are not considered here on that question; whether a person has taken an action that may make him or her ineligible for a dividend under 15 AAC 23.143(d) is not determinative of whether the person is an Alaska resident under AS 01.10.055 and AS 43.23.095(7), which is the issue that arises in cases involving AS 43.23.005(a)(2)-(3). In this case, the issue is not whether Mr. O. is a resident, but whether he has taken an action that will automatically make him ineligible the following year despite his continuing residency.

license, all of his personal property has been stored in Alaska during his absence, his bank accounts are maintained in Alaska, he returns to Alaska between terms at college, and he pays out-of-state tuition in Nebraska. Mr. O.'s permanent residence is the home of his parents, who have lived in Alaska for over thirty years. There is no evidence suggesting that Mr. O.'s intent is anything other than to return to Alaska to remain indefinitely and to make his home after he completes his education.

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....

The above language is absolute and can only be read one way: a person who registered to vote in another state during the qualifying year is not eligible for a dividend, subject to two exceptions that do not apply to this case. The regulation does not mean that a person who has registered to vote in another state has necessarily terminated his Alaska residency. It simply states that a person who registers to vote in another state is ineligible for a dividend the following year. The rule does not include any provision for consideration of surrounding circumstances, unusual cases, or balancing factors in favor of eligibility. Mr. O. registered to vote in Nebraska in 2008; he did so more than 30 days before the presidential election; and residency is required to vote in Nebraska. Mr. O. is not eligible for a 2009 dividend.

Although Mr. O. has met all statutory eligibility requirements for a permanent fund dividend, such as state residency, the Supreme Court has ruled that the Commissioner may adopt eligibility regulations that disqualify applicants who would otherwise qualify for dividends under

the statutory eligibility rules.² The court has deferred to the commissioner’s judgment on the wisdom of such regulations, so long as the regulations are rationally related to legitimate objectives, even if the regulations do not serve those objectives in every case.³ The court has found that limiting PFDs to Alaska residents is a legitimate objective, and it has found that streamlining the system and promoting administrative efficiency is also a legitimate objective.⁴

The number of otherwise eligible Alaskans who are disqualified because of mistakes like Mr. O.’s, and the number of appeals generated by such cases every year, suggests that at some point the department may wish to review the degree to which the regulation serves the goals of promoting efficiency or limiting dividends only to Alaska residents.⁵ At the present time, however, the law must be implemented as it is written.

IV. Conclusion

Mr. O. registered to vote in another state during 2008, the qualifying year for a 2009 dividend. Mr. O. is therefore ineligible for a 2009 dividend. Nothing in this decision is intended to affect Mr. O.’s eligibility for 2010 and subsequent dividends.

DATED this 31st day of December, 2010.

By: Signed
DALE WHITNEY
Administrative Law Judge

² *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).

³ *Id.*

⁴ *Id.*

⁵ The following is just a sampling of OAH cases similar to Mr. O.’s: 04-0159-PFD (2005); 05-03330-PFD (2005); 05-0332-PFD (2005); 05-0169-PFD (2005); 05-0879-PFD (2005); 05-0901-PFD (2006); 06-0003-PFD (2006); 05-0737-PFD (2006); 06-0180-PFD (2006); 07-0192-PFD (2007); 08-0108-PFD (2008)(“The result of the absolute rule in this case is harsh”); 08-0215-PFD (2008); 08-0254-PFD (2008); 08-0694-PFD (2009); 09-0234-PFD (2009); 09-0279-PFD (2009). A number of similar Department of Revenue cases predate establishment of the OAH in 2005.

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 11th day of February, 2010.

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

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