

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

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|-------------------------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| J. M. O. |) | OAH No. 09-0541-PFD |
| |) | Agency No. 2008-034-9585 |
| <u>2008 Permanent Fund Dividend</u> |) | |

DECISION

I. Introduction

J. M. O. 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. O. requested a formal hearing, which was held on February 1, 2010. Both Ms. O. and the division’s representative, Bethany Chase, appeared by telephone.

Based on the evidence and after due consideration, the division’s denial is affirmed. The undisputed evidence shows Ms. O. registered to vote in another state during 2007, the qualifying year for the 2008 PFD, so she is disqualified from receiving the 2008 dividend.

II. Facts

Ms. O. is in the U. S. Navy, currently stationed on a Navy cruiser out of Norfolk, Virginia. She came to Alaska in August 2004 to work in communications at Elmendorf Air Force Base. Ms. O. believed she would be staying in Alaska for six years, so she purchased a home in Anchorage. She subsequently filed for and received the 2006 and 2007 permanent fund dividends.¹

The program Ms. O. was working on was terminated early so Ms. O. transferred out of state. She left on February 14, 2007, bound for Virginia after six months of schooling in Florida. Upon arriving in Virginia, Ms. O. knew she would be deployed on naval vessels in the future and did not want to be out at sea when her vehicle tags or drivers license expired, so she took care of all her paperwork at one time. At the Virginia DMV office on September 29, 2007, Ms. O. was given the opportunity to register to vote in addition to getting her vehicle tags and drivers license. She registered to vote in Virginia, not knowing that registering to vote out of state could potentially disqualify her from receiving the PFD.²

¹ Division’s Formal Hearing Position Statement at pg. 1.
² Exh. 1 at pg. 3, question 7M.

Ms. O. timely filed for the 2008 PFD online on January 8, 2008.³ The division denied her application because she registered to vote in another state during the qualifying year for the 2008 PFD. Ms. O. submitted an informal appeal and subsequently requested a formal hearing after the informal appeal decision affirmed the division's denial of her 2008 PFD application.

III. Discussion

The qualifying year for the 2008 PFD is 2007.⁴ 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.⁵ 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;

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 of his or her application is not eligible for a dividend, unless the person registered to vote within 30 days of a presidential election and voted only in that election.

Ms. O. does not dispute that she registered to vote in Virginia in 2007, the qualifying year for the 2008 PFD. She said she did not intend to vote in local elections in Virginia because she would not be at home for long enough periods of time to know the local candidates or issues. Ms. O. merely registered to vote in Virginia for the purpose of obtaining an absentee ballot for

³ Exh. 1 at pg. 1.

⁴ AS 43.23.095(6).

⁵ AS 43.23.005(a)(2)-(3) (emphasis added).

the presidential election in 2008. Ms. O. asserts she deserves the 2008 PFD because she meets “the majority of the requirements for eligibility” and because she intends to return to Alaska.⁶

15 AAC 23.143(d) does not permit the division to consider a person’s intent to determine whether a person is an Alaska resident and should therefore qualify for a dividend in spite of having registered to vote in another state. It simply requires the division to ask whether the applicant registered to vote in another state during the specified time period. If the applicant has done so, the division must deny the application without further inquiry into the applicant’s status as a resident or his or her intent. This bright-line rule affords the division no choice and excludes from PFD eligibility applicants who would otherwise qualify under the statutory eligibility criteria. Although the result is harsh, the division has no discretion but to find Ms. O. ineligible for a dividend.

IV. Conclusion

J. M. O. registered to vote in Virginia more than 30 days prior to the presidential election, which, as discussed above, is a disqualifying act under 15 AAC 23.143(d). She is therefore not eligible for the 2008 PFD and the decision of the division to deny her application is AFFIRMED.

DATED this 16th day of April, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

⁶ Exh. 6 at pg. 5.

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 14th day of May,2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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