

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

In the Matter of: )  
 )  
A. H. )  
 )  
2009 Permanent Fund Dividend ) OAH No. 09-0587-PFD  
 ) Agency No. 2009-016-1175

**DECISION**

**I. Introduction**

Ms. H.’ application for a 2009 Permanent Fund Dividend (PFD) was denied because the Permanent Fund Dividend Division determined that Ms. H. engaged in several disqualifying acts: she registered to vote in another state, when registering to vote she declared herself to be a resident of that state thereby severing her Alaska residency, and she was not allowably absent. Any one of the acts is sufficient to render Ms. H.’ ineligible for a 2009 PFD. Following an unsuccessful informal appeal, Ms. H. requested a formal hearing by correspondence.

By notice dated November 3, 2009, Ms. H. was given until December 3, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both parties then had until December 13, 2009, to respond to any documents received from the other. The division filed a position statement and hearing exhibits. Ms. H. did not respond to the division’s position statement or add to the record on appeal. The division’s denial of Ms. H. application is affirmed because she has not established by a preponderance of the evidence that she did not register to vote in another state during the qualifying year. Nor has she established by a preponderance of evidence that all of her absences during the qualifying year were allowable. Ms. H. has established that she did not sever her Alaska residency. Therefore, nothing in this decision precludes her from eligibility for future PFDs.

**II. Facts**

Ms. H. has resided in Alaska since 1985. She attended Northern Arizona University from 2003 – 2008, paying non-resident tuition so she considered her Alaska residency to be “continuous.”<sup>1</sup> Ms. H. wanted to participate in the 2008 national election so on June 17, 2008,

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<sup>1</sup> Exhibit 5, page 2 – 3; Exhibit 9.

Ms. H. registered to vote in Arizona.<sup>2</sup> The Arizona voter registration form required the person registering affirm that he or she was an Arizona resident.<sup>3</sup>

Her last date of college enrollment was May 15, 2008.<sup>4</sup> After graduation, Ms. H. remained in Arizona accepting temporary employment while she looked for permanent employment in Alaska. She returned to Alaska 128 days later on September 20, 2008 after obtaining full-time permanent employment.<sup>5</sup>

### III. Discussion

The division raises three arguments in support of its denial of Ms. H.' 2009 PFD application. The first is that Ms. H. engaged in a disqualifying action when she registered to vote in Arizona. The second is that when she registered to vote, the application required she declare herself to be a resident of Arizona and by doing so Ms. H. severed her Alaska residency. The final reason for denial is that Ms. H. is ineligible for a 2009 PFD as a matter of law because she was not allowably absent

- A. *By registering to vote in Arizona in 2008, Ms. H. made herself ineligible for a 2009 PFD, but she did not sever her Alaska residency.*

The qualifying year for the 2009 PFD is 2008.<sup>6</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;

The regulation disqualifying an applicant who has registered to vote in another state is absolute. It does not permit the division to consider a person's intent to determine whether a

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<sup>2</sup> Exhibit 5, page 3; Exhibit 7, page 2.

<sup>3</sup> Exhibit 7, page 2.

<sup>4</sup> Exhibit 9, page 1.

<sup>5</sup> Exhibit 1, page 3.

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

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.<sup>7</sup> 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.

Ms. H. does not dispute that she registered to vote in Arizona. Her registering to vote in Alaska upon her return does not negate her act of registering in Arizona. This is a bright line rule which precludes her receipt of a 2009 PFD. This action does not, however, as a matter of law sever her Alaska residency.

The definition of state resident as it applies to the Alaska Permanent Fund dividend program is set out in AS 43.23.095(7). For purposes of the PFD program, a person is a state resident if he or she is "physically present in the state with the intent to remain indefinitely" or, if not physically present, the person "intends to return to the state to remain indefinitely under the requirements of AS 01.10.055." AS 01.10.055 provides that once a person has established residency, that person remains a resident during an absence unless 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 return to Alaska to remain indefinitely and to make a home."<sup>8</sup>

Intent, while subjective, is demonstrated through objective acts. Therefore, it is not enough that Ms. H. has, throughout her appeal, maintained that she has always been an Alaska resident. Turning to her objective acts: Ms. H. paid out-of-state tuition, returned to Alaska for holidays, she has family in Alaska, obtained full-time permanent employment and is registered to vote in Alaska. All are objective acts that weigh in favor of Ms. H. remaining an Alaska resident.

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<sup>7</sup> There is a 30-day exception in the regulation. That provision is in the regulation because of Alaska's absentee registration deadline. The drafters of 15 AAC 23.143 realized that an Alaskan who was out of state during the last weeks before a presidential election might want to register to vote, but that it would be impractical or impossible to arrange absentee voting in Alaska within such a short time frame. They, therefore, allowed such a person to register elsewhere. A person with more than 30 days to work with before the election does have the option to register absentee in Alaska. Hence, no exception was needed for such a person, and none was created.

<sup>8</sup> AS 01.10.055(a), (c).

These factors are weighed against Ms. H.: registering to vote in Arizona and declaring she was an Arizona resident. The challenge presented by this case is that Ms. H. elected a hearing by correspondence so she could not be questioned. If she had been questioned she could have answered why she did not vote an Alaska absentee ballot, or why felt compelled to register to vote in Arizona in the first place.

It is Ms. H.' burden to establish that it is more likely than not that at all times relevant she met the statutory definition of a resident as required by the PFD program. It is a close call. However, when viewed as a whole, it is more likely than not that when Ms. H. registered to vote in Arizona she did not fully appreciate the legal implications of doing so and did not intend to declare herself a resident of Arizona, thereby severing her Alaska residency. Therefore, her registering to vote in Arizona is a disqualifying act under 15 AAC 23.143(d)(12) but it did not sever her residency for purposes of the Alaska PFD program.

B. *Ms. H. is not eligible for a 2009 PFD because she was not allowably absent from Alaska during the qualifying year.*

In order to qualify for a permanent fund dividend, the applicant must have either been physically present in Alaska all through the qualifying year, or have only been absent for reasons listed in AS 43.23.008.<sup>9</sup> There are seventeen reasons listed that a person may be absent from Alaska and still qualify for a dividend the next year. Reason number (1) is an absence for someone who is "receiving secondary or post secondary education on a full-time basis."<sup>10</sup> Reason number (17(B)) is an absence not to exceed "120 days in addition to any absence or cumulative absences claimed under (1)..."<sup>11</sup>

Ms. H. absences while attending Northern Arizona University are allowable. In addition, she was permitted another 120 days to be absent from Alaska without losing her eligibility. Ms. H. was absent 128 days in addition to her absences for allowable educational purposes. Eight days of the 120 days were not allowable and Ms. H., therefore, is not eligible to receive the 2009 PFD.

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<sup>9</sup> AS 43.23.005(a)(6).

<sup>10</sup> AS 43.23.008(a)(1).

<sup>11</sup> AS 43.23.008(a)(17)(B).

#### **IV. Conclusion**

There are several reasons why A. H. is not eligible for a 2009 PFD. She registered to vote in another state during 2008 at a time that was not within 30 days of a presidential election. She was also absent from Alaska for eight days in excess of the allowable 120 days. Therefore, A. H. is not eligible for the 2009 PFD. Nothing in this decision precludes her from eligibility for future PFDs.

DATED this 8th day of February, 2010.

By: Signed  
Rebecca L. Pauli  
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 8th day of March, 2010.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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