

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

IN THE MATTER OF )  
 )  
 V. R. )  
 ) Case No. OAH 09-0602-PFD  
 )  
2009 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

V. R. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. R. was not eligible, and it denied the application initially and at the informal appeal level. Ms. R. requested a formal hearing; a hearing was held on December 10, 2009. Ms. R.’s mother, L. A. R. represented Ms. R. by telephone under a duly executed power of attorney. Wendy Hughes represented the division by telephone.

Ms. R. is not eligible for a 2009 dividend because she registered to vote in another state during 2008, the qualifying year for a 2009 dividend.

**II. Facts**

There are no disputes about the material facts. Ms. R. is an Alaska resident who was in Kentucky attending college as a full-time student during 2008. Looking forward to participating in her first presidential election, Ms. R. registered to vote at her college in Kentucky. Ms. R.’s intent was only to vote in the national presidential election.

Shortly after she registered, Ms. R. spoke with her mother by phone, and learned that as an Alaska resident she should have registered to vote in Alaska, even for the national election. Ms. R. immediately attempted to cancel her registration in Kentucky. A letter in the record from the Taylor county clerk states that:

To Whom It May Concern:

This letter is to notify anyone or any agency that V. R. never cast a vote in the State of Kentucky. V. did register as part of a campus voter registration drive, but later informed us that she should not be a registered voter in Kentucky. We explained to her that the registration books were closed for the November 2008 General Election and we could not take her out of the system at that time, but we could delete her out of the voter registration system after the election was over. After the election she came in and signed to have her registration terminated. The enclosed roster is to prove to anyone who may need this information that while V.'s name was on the roster, she never cast a vote in the State of Kentucky on Election Day. Had V. cast a vote her signature would have appeared in the corresponding block with her name.

Thank you very much for your consideration of this material.

An attached voter sign-in sheet shows that Ms. R. did not sign in to vote in the election.

There is no dispute that Ms. R. has remained an Alaska resident, that she has not engaged in any deceptive or fraudulent behavior and that she has been honest and forthright in her dealings with the division. There is no evidence contradicting Ms. R.'s assertion that she registered in Kentucky only for the purpose of voting in the national election, and that she no intent to participate in elections for Kentucky local offices.

### **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....

Because Ms. R. did not actually vote in Kentucky, subparagraph (13) above does not apply. Subparagraph (12), on the other hand, clearly does apply. The 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 is not directly related to whether the applicant is actually an Alaska resident. 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. Ms. R. registered to vote in Kentucky in 2008; she did so more than 30 days before the presidential election; and residency is required to vote in Kentucky. Ms. R. is not eligible for a 2009 dividend.

Ms. R. argues that the regulation is unfair. While she concedes that registration to vote in another state is a factor that the division should properly monitor and examine, she argues that

automatic disqualification of a young student without any recourse is an extraordinarily harsh penalty for being confused about how to properly register to vote as an Alaskan resident.

The Supreme Court has found that the Commissioner may adopt eligibility regulations that disqualify applicants who would otherwise qualify for dividends under the statutory eligibility rules.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

The number of otherwise eligible Alaskans who are disqualified because of mistakes like Ms. R.'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.<sup>4</sup> While these discussions may merit consideration in future revisions of the PFD regulations, the law as it is currently written must be applied fairly and uniformly to all applicants. Like the many other students in similar situations, Ms. R. is not eligible for a current year dividend.

#### **IV. Conclusion**

Because she registered to vote in another state during the qualifying year more than 30 days before a presidential election, Ms. R. is not eligible for a 2009 dividend. Nothing in this decision is intended to affect Ms. R.'s eligibility for 2010 and subsequent dividends.

DATED this 31<sup>st</sup> day of December, 2009.

By: \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

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<sup>1</sup> *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).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> The following cases, which are available on the Office of Administrative Hearings website, is just a sampling of OAH cases similar to Ms. R.'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.]