

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

In the Matter of:)	
S & D W)	OAH No. 11-0089-PFD
)	Agency No. 2010-007-5090/4857
<u>2010 Permanent Fund Dividends</u>)	

DECISION

I. Introduction

D and S W applied 2010 Permanent Fund Dividends (PFDs). The Permanent Fund Dividend Division (Division) denied these applications. Ms. and Mr. W completed the informal appeal process and requested a formal appeal.

A hearing on this appeal was held on April 14, 2011. Mr. W testified by phone. The Division was represented by Mr. Peter Scott, who also appeared by phone. Because Mr. W registered to vote in New Mexico and Ms. W established her principal home in another state during 2009, they are not eligible for the 2010 PFD. Ms. and Mr. W are also disqualified because they provided intentionally deceptive information on their 2010 PFD applications.

II. Facts¹

The W's first moved to Alaska in 2006. Ms. W became an Alaska resident. Her husband, Mr. W, also became an Alaska resident. Mr. W was stationed in Alaska on active duty with the military. In 2009, Mr. W's duty station was changed to New Mexico with a reporting dated of October 18, 2009. The military paid to move the family's house hold goods to New Mexico in 2009. Ms. W left Alaska in 2009. Mr. W, registered to vote in New Mexico at a barbeque held for a political cause. The family expects to return to live in Alaska after Mr. W's tour of duty ends.²

Mr. W admitted that they claimed to be "present in Alaska today" on a day that they were in New Mexico because it would have complicated the application process if they had answered correctly. Mr. W explained that his wife had filed of their applications online and had found that "when you clicked no" admitting that you were not in Alaska "the form was incredibly long" and

¹ The factual findings are based on Mr. W's testimony except where otherwise noted.

² Exhibit 8, page 3.

looking at the forms she did not believe there was any harm” in saying that they were in Alaska “in order to avoid going through all the extra steps.”³

III. Discussion

The law governing PFD applicants who register to vote in another state is 15 AAC 23.143(d), which reads:

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

* * * * *

(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;

Mr. W provided examples of his ties to Alaska as evidence of his continued Alaska residency.⁴ Mr. W also argued that his registration was not valid because he was not a New Mexico resident when he registered to vote in that state. The law disqualifying an applicant who has registered to vote in another state, 15 AAC 23.143(d)(12) is an absolute rule. It clearly states that a person is not eligible for a dividend if he registers to vote in another state between the beginning of the qualifying year and the date of application. The law does not permit the Division to weigh this fact against other facts 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. The regulation also only requires that the PFD applicant to register to vote to be disqualified for a PFD. The regulation does require that the voter registration be impervious to any legal challenge.

The Alaska Supreme Court has upheld the authority of the Department of Revenue to implement such regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility. The regulation simply requires the Division to ask whether the applicant registered to vote in another state during the specified time period. If the applicant

³ Exhibit 1, page 4.

⁴ Recording of Hearing.

has done so, the Division must deny the application without further inquiry into the applicant's status as a resident. The regulation affords the Division no choice.

Mr. W admitted registering to vote in New Mexico in 2009, Mr. W is not eligible for a 2010 PFD.

The Division denied Ms. W's application because she maintained her principal home outside Alaska the date of her 2010 PFD application. Before reaching that issue, however, it is important to explain why Ms. W is not eligible as the spouse of an active duty member of the armed forces.

Alaska statutes and regulations list the requirements to be eligible for a PFD. One requirement is that an applicant be physically present in Alaska during the entire qualifying year or, if absent, be on an allowable absence.⁵ Recognizing the importance of military service and the unique requirements of that service, the legislature has created a broad allowable absence for military families. Ms. W would not lose her PFD eligibility while absent from Alaska while

- (3) serving on active duty as a member of the armed forces of the United States or accompanying , as that individual's spouse, minor dependent, or disabled dependent, an individual who is
 - (A) serving on active duty as a member of the armed forces of the United States; and
 - (B) eligible for a current year dividend.⁶

Ms. W cannot claim this allowable absence, however, because her husband is not eligible. Her husband is not eligible because he registered to vote in New Mexico in 2009. Because her husband is not eligible for a 2010 PFD, Ms. W is not accompanying an active duty member of the armed forces who is "eligible for a current year dividend."

Alaska law also contains a catch-all provision that allows absences for up to 180 days for any reason as long as the absence is not inconsistent with the intent to remain an Alaska resident.⁷ During the relevant qualifying year, Ms. W was absent from Alaska for less than 180 days, her absence is allowable as long as she did nothing that would disqualify her.

⁵ Alaska Statute AS 43.23.005(a)(6).

⁶ AS 43.23.008(a)(3).

⁷ AS 43.23.008(a)(17). The precise number of days a person may claim under this provision varies based on what other allowable absences he or she may be claiming. In this case, the 180 day provision under AS 43.23.008(a)(17)(A) is applicable.

The Division argues that Ms. W disqualified because she established her primary home in New Mexico. A person is not eligible to receive a PFD if at any time during the qualifying year and through the date of application, the applicant has

- (1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed
 - (A) in AS 43.23.008(a)(1) – (3), (9) – (11), or (16); or
 - (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph.⁸

Because Ms. W's husband is not eligible for a 2010 PFD, she does not qualify for any of the exceptions to this regulation. Thus, Ms. W would not be eligible to receive a PFD if she maintained her principal home in New Mexico for even one day before her 2010 PFD application was complete.⁹

The family's household goods were moved to New Mexico. The family lived in New Mexico in 2009. Mr. W notes that they have maintained other ties to Alaska and that they intend to move back to Alaska as soon as Mr. W's duty assignment in New Mexico ends.

Ms. W's disqualification results from her actions starting in 2009 – when she left Alaska – through the date her application was complete. This decision does not make any ruling as to whether Ms. W maintained her principal home in New Mexico after her 2010 application was denied, nor is it intended to suggest whether she will be eligible for a 2011 PFD.

The eligibility requirements for a 2010 PFD disqualify those who provide intentionally deceptive information on their PFD applications:

Alaska Regulation 15 AAC 23.103. Application generally

* * *

- (j) The department will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department....

In a PFD hearing, the individuals who filed the appeal, in this case the Ws, have the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰

⁸ Alaska Regulation 15 AAC 23.143(d).

⁹ This does not mean she would not be an Alaska resident. There is a difference between acts that sever ones residency and acts that merely make one ineligible to receive a PFD. See, *In The Matter Of M.E.*, OAH # 09-0284-PFD.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

Mr. W admitted that they claimed to be "present in Alaska today" on a day that they were in New Mexico because it would have complicated the application process if they had answered correctly. Mr. W explained that his wife had filed of their applications online and had found that "when you clicked no" admitting that you were not in Alaska "the form was incredibly long" and looking at the forms she did not believe there was any harm" in saying that they were in Alaska "in order to avoid going through all the extra steps." The problem with this reasoning is that it is the Division's job not the PFD applicant's job to decide what information is required to be provided on a PFD application. It is the PFD applicant's responsibility to provide accurately the information required on the application. It is then Division's job to determine how the information provided by the applicant reflects on the applicant's eligibility. When PFD applicants provide incorrect information to save themselves work, because they believe they are eligible, they take away the Division's ability to make the eligibility determination independently based on the correct information. In this case, the "incredibly long" form that the W's were asked to have complete when they first provided the correct information and clicked "no" truthfully indicating that they were not in Alaska would have required them to disclose that they had moved to New Mexico and that Mr. W had registered to vote in that state. This was information that the Division had to expend resources to discover after the ISP address raised suspicions about the accuracy of the information the Ws had provided on their applications.

The Ws provided intentionally deceptive information on their PFD application because they wished to apply on-line and to avoid answering in a way that would complicate the application process. If they provided this incorrect information believing that they were eligible for 2010 PFDs, it does not change the fact that they provided intentionally deceptive information on their 2010 PFD applications.

IV. Conclusion

D W registered to vote in New Mexico and is not eligible for a 2010 PFD. S W did maintain her principle home outside the State of Alaska before she applied for the 2010 PFD. Ms. and Mr. W

are also disqualified because they provided intentionally deceptive information on their 2010 PFD applications. Accordingly, the Division's decision denying their applications is affirmed.

DATED this 3rd day of May, 2011.

By: Signed
Mark T. Handley
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 3rd day of June, 2011.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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