

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

In the Matter of:)	
)	
B T)	
)	
<u>2011 Permanent Fund Dividend</u>)	OAH No. 12-0103-PFD Agency No. 2011-052-5373

DECISION

I. Introduction

Ms. T’s application for a 2011 Permanent Fund Dividend (PFD) was denied because the Permanent Fund Dividend Division determined that Ms. T engaged in several disqualifying acts in 2010, the qualifying year for the 2011 PFD. The division alleges Ms. T registered to vote in another state, and when registering to vote, she declared herself to be a resident of that state, thereby severing her Alaska residency. Either is sufficient to render her ineligible for a 2011 PFD. Following an unsuccessful informal appeal, Ms. T requested a formal hearing by telephone.

The telephonic hearing was held May 23, 2012. Ms. T participated, as did PFD Specialist Peter Scott. The division’s denial of Ms. T’s 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. Ms. T has established, and the division agrees, that she did not sever her Alaska residency.¹ Therefore, nothing in this decision precludes her from eligibility for future PFDs.

II. Facts

Ms. T has resided in Alaska since moving here with her family in the early 1970s when she was just five or six years old. She has never lived outside of Alaska for an extended period of time until December 2009, when her husband, who is in the military, was stationed in Indiana.

Ms. T went to the Indiana Bureau of Motor Vehicles (BMV) to obtain a driver’s license. It was then that she ended up as registered to vote in Indiana. Ms. T does not know how she was

¹ Originally the division took the position that Ms. T’s actions were inconsistent with maintaining Alaska residency. However, on May 24, 2012, the division provided written notice that, based upon further consideration of the record and Ms. T’s testimony, it reversed its position writing that in “this specific case, Alaska residency was not severed.” The Administrative Law Judge concurs with the division’s position as it is in keeping with the Commissioner of Revenue’s policy in factually similar cases.

registered to vote. She “never intended to register, nor did she have knowledge of such registration” until she went to the PFD office to check on the status of her 2011 PFD application.² The same day she found out she was registered to vote, she immediately took action to rescind her Indiana voter registration and registered to vote in Alaska. In support of her request for a formal hearing, Ms. T wrote:

I learned through this investigation that it was an inadvertent entry by an Indiana BMV employee that caused my Indian voter’s registration. I was asked by the BMV representative who took my application . . . to sign an electronic screen two times. She advised that the first signature was for my license and the second was in order to turn down organ donation. I never signed acknowledging voter registration.³

However, there is a voter registration card signed by Ms. T dated February 3, 2010.⁴

Apparently there were computer problems at the Indiana BMV on the day Ms. T obtained an Indiana driver’s license. Ms. T represented that shortly after the registration process started there was some discussion regarding registering to vote. Ms. T told the BMV employee that she was registered to vote in Alaska.

In an effort to explain how her signature was placed on a voter registration card, Ms. T offered that the BMV employee misinterpreted Ms. T’s answer as “yes,” that she wanted to vote in Indiana. Ms. T recalled telling her that she did not want to register to vote. The computer was having problems and freezing up and it took over three hours for her to complete the licensing process. It never occurred to her to confirm whether she had been registered to vote or not.

III. Discussion

The division denied Ms. T’s application for a 2011 PFD because it concluded she engaged in a disqualifying action when she registered to vote in Indiana. Ms. T believes she should not be ineligible because of an action she never intended.

The qualifying year for the 2010 PFD is 2010.⁵ 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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² Exhibit 9 at 2.
³ Exhibit 9 at 3.
⁴ Exhibit 7 at 2.
⁵ AS 43.23.095(6).

(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 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.⁶ 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. T testified that she did not intend to register to vote in Indiana. She also testified that she signed two computer screens but did not independently verify what she was electronically signing. Her testimony is credible. However, the Indiana voter registration form is signed by Ms. T.

Indiana code 3-7-14-1 and 3-7-14-5 provide that an application to obtain a driver's license serves as an application for voter registration "*unless* the applicant fails to sign the voter registration application."⁷ Therefore, while Indiana combines the driver's license application with a voter registration, it requires a separate signature on a form that requires the applicant to attest to certain facts and sign the application under penalty of perjury.⁸

Putting the pieces together, the driver's license process took a long time (over 3 hours) and there were several computer problems. The Indiana voter registration process, combined

⁶ 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.

⁷ IC 3-7-14-4 (emphasis added).

⁸ IC 3-7-14-7(3)(B) & (C).

with the driver's license application has a distinguishing feature: it is more likely than not that Ms. T was trying to get through the arduous process and was not paying as close attention as she should have, which in turn resulted in her signing the voter registration screen without realizing what she was doing.

Ms. T is not the first resident that has experienced denial because of inadvertent voter registration, and she is unlikely to be the last.⁹ Regardless, her signature on the Indiana voter registration form shows it is more likely than not that Ms. T did register to vote in another state even though she gave the matter little thought at the time. Her action precludes her receipt of a 2011 PFD

IV. Conclusion

B T is not eligible for a 2011 PFD because she registered to vote in another state during the qualifying year. Nothing in this decision precludes her from eligibility for future PFDs.

DATED this 8th day of August, 2012.

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 4th day of September, 2012.

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

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

⁹ *In Re M.S.* OAH No. 09-0234-PFD (April 7, 2009); *In re B.B.* OAH No. 09-642-PFD (March 11, 2010); *In re A.H.* 05-0169-PFD (August 30, 2005).