

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

In the Matter of:)	
)	
N U)	OAH No. 12-1015-PFD
)	Agency No. 2012-063-3469
<u>2012 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

This case is N U’s appeal of the denial of her application for a 2012 Alaska Permanent Fund Dividend (PFD or dividend). Ms. U timely applied for her 2012 PFD. Ms. U’s application was denied by the Permanent Fund Dividend Division (Division) because she registered to vote in California. She requested an informal appeal and was again denied. Ms. U then requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal. PFD specialist Bethany Thorsteinson represented the Division and filed a position paper. The hearing was held on February 6, 2013. Ms. U participated in the hearing. The record in this appeal closed at the end of the hearing.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Ms. U does not qualify for a 2012 dividend because she registered to vote in California. Ms. U also does not qualify for a 2012 dividend because she moved from Alaska under circumstances that were inconsistent with the intent to maintain Alaska residency in 2011.

II. Facts

Ms. U was a resident of Alaska who qualified for the 2011 PFD.¹ Ms. U was absent from Alaska for less than 180 days during 2011. She moved to California for health reasons. At the formal hearing Ms. U did not dispute that she moved from Alaska in 2011 with no definite plans to move back, and decided to move back later during her absence, when she had problems with claims health care benefits in California. Ms. U admitted at the hearing that she registered to vote in California because she thought she was going to live there. Ms. U explained that she believed that she was eligible for a 2012 PFD despite her move because she was absent less than 180 days in 2011.²

¹ Exhibit 1.
² Recording of Hearing.

Based on the evidence in the record, I find that during part of 2011, Ms. U was living in California under circumstances that were inconsistent with the intent to remain a resident of Alaska.³ I also find that in December of 2011, Ms. U registered to vote in California.⁴

III. Discussion

Ms. U was very honest about the circumstances of her absence from Alaska. Unfortunately, the PFD eligibility requirements are very strict. To qualify for the 2012 PFD, an applicant must meet the eligibility requirements during all of 2011, the qualifying year for the 2012 PFD, and through the date of application. That means, in order to qualify, Ms. U would have had to have been an Alaska resident during all of her absence, which began in 2011, through the date of her application.⁵ To be an Alaska resident, one must not claim residency in another state, or be absent under circumstances that are inconsistent with the intent required to remain a resident of Alaska.⁶

The law governing PFD applicants who register to vote in another state is 15 AAC 23.143(d)(12), 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;

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 she 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. This regulation excludes from PFD eligibility applicants who would otherwise qualify under the eligibility requirements.

³ Exhibit 1& Recording of Hearing.

⁴ Exhibit 1 & 6 & Recording of Hearing.

⁵ Alaska Statute AS 43.23.005(a).

⁶ AS 01.10.055(c).

In a formal hearing for an appeal of a PFD denial, the person who filed the appeal, in this case, Ms. U, has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁷ Ms. U did not show by a preponderance of the evidence that she is eligible to receive her 2012 PFD. Ms. U admitted that she was absent from Alaska with no definite plans to return when she first moved to California in 2011. The fact that she later decided to move back to Alaska does not mean that she maintained her Alaska residency when she moved to California planning to live there indefinitely.

Ms. U's confusion about the PFD eligibility requirements is understandable. It was not the length of Ms. U's absence, but the undisputed fact that she was absent during the PFD qualifying period without definite plans to return, that is inconsistent with the intent to remain an Alaska resident.⁸ In 2011 Ms. U moved to California. The circumstances of this absence disqualify her from 2012 PFD eligibility even though she later returned to Alaska. She is also disqualified because she registered to vote in California.

IV. Conclusion

The Division's decision is upheld. Ms. U is not eligible to receive the 2012 PFD.

DATED this 11th day of February, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

⁷ Alaska Regulation 15 AAC 05.030(h).

⁸ Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

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 March, 2013.

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

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