

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

In the Matter of)	
)	
S A)	OAH No. 14-0376-PFD
)	Agency No. 2013-058-2820
<u>2013 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

S A is a young woman, born and raised in Alaska, who is presently a college student in Kansas. This case relates to her application for a 2013 Permanent Fund Dividend (PFD).

The Permanent Fund Dividend Division determined that Ms. A was ineligible because she had registered to vote in Kansas just prior to filing for her 2013 PFD, at a time more than 60 days from a presidential election. Ms. A initiated an informal appeal over three months after the denial decision. The Division rejected the appeal as untimely. Ms. A requested a formal hearing, which took place on April 14, 2014.

The Division's denial of the application is affirmed for two reasons. First, the appeal is untimely and Ms. A has not shown good cause for the delay. Second, undisputed evidence shows that she registered to vote in another state (outside the narrow window for presidential election registration), which is a disqualifying act regardless of how compelling the circumstances that led her to do so. This decision does not affect Ms. A's underlying claim of Alaska residency, nor disqualify her from future dividends.

II. Facts

The key facts in this case are not in dispute.¹ S A lived in Alaska until August of 2012.² In that month she enrolled in No Name County Community College in Kansas on a soccer scholarship. The division agrees that her absence from the state during this period was an allowable one.

On March 7, 2013, while still a student in Kansas and prior to applying for her 2013 PFD, Ms. A registered to vote in No Name County, Kansas.³ She did so on the intense urging of her soccer coach and the college registrar, who were mentors and almost like parents to her. The voter registration was part of a plan to move Ms. A to a soccer scholarship for local residents,

¹ Except as otherwise noted, the facts recounted here are taken from the testimony of S A, corroborated in part by the testimony of Registrar C J.

² Ex. 1, 2.

freeing up a scholarship slot for another candidate from a distant location. Ms. A was very reluctant to register to vote in Kansas, but she did so in reliance of the advice of her mentors that it would not have any adverse effects on her status in Alaska.

Ms. A applied for a 2013 PFD on March 30, 2013, honestly disclosing that she had just registered to vote in Kansas.⁴ The PFD Division immediately queried her to determine if this was true, and she confirmed that it was.⁵ On May 17, 2013, the Division denied her application on the single basis that she had registered to vote in another state.⁶ In accordance with Department of Revenue regulations, she was informed that she had until June 16, 2013 to appeal the denial.⁷

The Division's denial notice went to Ms. A's home address in Alaska, and her parents put the envelope in her room along with other mail awaiting her return. Ms. A returned to her home in late May, but her room was messy and she did not see the PFD correspondence. She discovered it in late July as she was preparing to return to Kansas. She took the denial notice to college with her in early August and showed it to her coaches. On August 29 she completed a Request for Informal Appeal.⁸ About the same time, she canceled her Kansas voter registration, having never voted there.⁹

III. Discussion

A. Timeliness

There has to be some finality in government business, and like most government programs, the PFD program has a deadline for disputing adverse decisions. The deadline is "30 days after the date of the notice of . . . disallowance, unless the individual demonstrates a reasonable cause for failure to file within this period."¹⁰ Hence, the presumptive deadline for Ms. A was June 16, 2013, which she missed. She could be excused from the deadline if she showed "reasonable cause;" in the same vein, a parallel regulation allows the administrative law judge to "waive" this deadline if strict adherence to it would "work an injustice."¹¹

³ Ex. 7, p. 9.

⁴ Ex. 1, p. 2.

⁵ Ex. 3, p. 2.

⁶ Ex. 5, p. 1.

⁷ *Id.*

⁸ Ex. 6, p. 1.

⁹ Ex. 6, p. 4.

¹⁰ 15 AAC 05.010(b)(5).

¹¹ 15 AAC 05.030(k).

The escape valve for “reasonable cause” or “injustice” has been used to address compelling circumstances, such as where an applicant fails to appeal on time because of erroneous advice given by the PFD Division.¹² It does not eliminate the deadline in the case of casual oversights, such as forgetting to change an address or relying on others to pick up one’s mail.¹³ Ms. A’s situation falls in the latter category; she overlooked the PFD denial that her parents had placed in her room. Even after she discovered it, she waited for another month to go by before she submitted her appeal. The 104 days she took to appeal, notwithstanding a 30-day deadline, was not reasonable, and enforcement of the deadline is not unjust.

B. Voter Registration

A relatively common source of appeals in PFD cases is the population of Alaskan students who register to vote in other states, and then learn, to their regret, that their actions have disqualified them from a PFD. Just before she applied for this dividend, while still a student on an allowable absence from Alaska, Ms. A registered but did not actually vote outside Alaska. Her registration was only active for five months. Nonetheless, the act of registering falls within the list of acts that disqualify an applicant from receiving the subsequent dividend.

Ms. A is articulate in explaining that she was very reluctant to register to vote in Kansas, doing so only under pressure from misinformed adult mentors. The language of the regulation and its prior interpretations do not call for a balancing of the circumstances, however.

The applicable regulation is 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

* * * * *

(12) registered to vote in another state or country, except if the individual

(A) registered to vote in another state within 60 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[.]

¹² See *In re NS*, OAH No. 06-0748-PFD (Dep’t of Revenue 2007) (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD060748.pdf>).

¹³ See *In re GMH*, OAH No. 11-0304-PFD (Dep’t of Revenue 2011) (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD110304.pdf>); *In re DS*, OAH No. 09-0033-PFD (Dep’t of Revenue 2009) (“An applicant’s busy life or his neglect to inform himself about his appeal rights is not ordinarily a basis to waive the appeal deadline”) (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD090033.pdf>).

Notably, the regulation applies even if one does not actually vote under the out-of-state registration. There are separate and independent disqualifications in the regulation, linked by the conjunction “or,” for applicants who register elsewhere (15 AAC 23.143(d)(12), quoted above) and for applicants who vote elsewhere (15 AAC 23.143(d)(13)).

The law disqualifying an applicant who has registered to vote in another state has been written as an absolute rule. It 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, unless she fits into one of the narrow exceptions. Ms. A does not fit into exception (A) because her registration was not within 60 days of a presidential election. She does not fit into exception (B) because her registration was not in another country.

The Alaska Supreme Court has upheld the authority of the Department of Revenue to create such regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility.¹⁴ The regulation at issue in this case calls for denial based on a single verifiable act, without further inquiry into the applicant’s status as a resident.

The result of the absolute rule in this case is harsh. Like many students who go to college outside Alaska, Ms. A made a mistake with important financial consequences, never intending to affect her PFD eligibility. Other Alaskan students around the country have made the same mistake, and the Department’s response has been evenhanded, disqualifying all.¹⁵ Barring a reinterpretation of the regulation, the absolute rule must be applied in this case as well.

Registration in another state is a disqualification from the next dividend, but the regulations do not require that this single act be deemed to sever Alaska residency. Residency is a broader concept, usually judged on the basis of many factors. This decision should not be read to suggest that S A severed her Alaska residency at any time during 2013.

IV. Conclusion

S A was late in appealing the denial of her 2013 Permanent Fund Dividend, and she was not able to show that adherence to the deadline would work an injustice. In addition, she

¹⁴ *Church v. State of Alaska; Department of Revenue*, 973 P2d 1125, 1128-9 (Alaska 1999); *Casio v. Department of Revenue*, 858 P.2d 621, 625 (Alaska 1993) (“commissioner has the authority to promulgate a regulation excluding permanent fund dividend applicants who arguably fall within the statutory definition of eligible applicants”).

¹⁵ *E.g.*, OAH No. 07-0192-PFD (2007); OAH No. 12-0103-PFD (2012); OAH No. 08-0108-PFD (2008); OAH No. 09-0651-PFD (2010); OAH No. 10-0041-PFD (2010); OAH No. 07-0505-PFD (2007); OAH No. 05-0518-PFD (2005); OAH No. 05-0169-PFD (2005); OAH No. 05-0458-PFD (2006); OAH No. 06-0003-PFD (2006); OAH No. 05-0737-PFD (2006); OAH No. 06-0180-PFD (2006); OAH No. 06-0785-PFD (2007). Most of these decisions are available at: <http://aws.state.ak.us/officeofadminhearings/Category.aspx?CatName=PFD>.

registered to vote in another state during 2013, prior to filing for her 2013 PFD and at a time that was not within 60 days of a presidential election. She therefore is not eligible for the 2013 PFD. The decision of the Permanent Fund Dividend Division to deny the application of S A for a 2013 Permanent Fund Dividend is AFFIRMED. Nothing in this decision precludes Ms. A from eligibility for future PFDs.

DATED this 15th day of April, 2014.

By: Signed
Christopher Kennedy
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 12th day of May, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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