

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

In the Matter of)	
)	
N C)	OAH No. 14-1260-PFD
)	Agency No. 2013-031-7653
<u>2013 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

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

The Permanent Fund Dividend Division determined that Ms. C was ineligible because she voted in a state election in Minnesota during the qualifying year for her 2013 PFD.¹ Ms. C, who was in Tanzania at the time of the denial, initiated an informal appeal soon after her return but about six weeks after the deadline for doing so. The Division rejected the appeal as untimely, also holding to its initial determination that Ms. C was ineligible in any event.² Ms. C requested a formal hearing, which took place on August 26, 2014. Ms. C attended the hearing in person.

At the formal appeal level, the Division withdrew its contention that the first appeal was untimely, observing that there was reasonable cause for her delay in appealing.³ Importantly, the Division also stated clearly that it did not regard her vote in a Minnesota election as having severed her Alaska residency, confirming that her action therefore “will not be relevant in determining whether or not Ms. C is eligible for 2014 or subsequent dividends.”⁴ However, the Division held to its view that her vote disqualified her from the 2013 dividend. This decision concludes that the Division was correct.

II. Facts

The key facts in this case are not in dispute.⁵ N C was on an allowable absence as a full-time college student in No Name, Minnesota during the spring and fall semesters of 2012.⁶ She

¹ Ex. 7, p. 1.

² Ex. 9.

³ Division’s position statement at 2.

⁴ Id. at 5.

⁵ Except as otherwise noted, the facts recounted here are taken from the testimony of Ms. C, corroborated in part by the testimony of Bethany Thorsteinson regarding her investigative contact.

⁶ See Ex. 3, p. 1.

missed the deadline for obtaining an absentee ballot in Alaska for the presidential election that November. Still wanting to vote, she registered to Minnesota, and she subsequently cast a ballot in the state elections held concurrently with the federal election.⁷

Ms. C had no idea that voting in a Minnesota election could affect her PFD eligibility. She has since re-registered in Alaska. Ms. C has been completely honest about her actions, disclosing on her 2013 PFD application that she voted in Minnesota in November of 2012 and admitting frankly that she probably voted in the Minnesota state elections on that occasion.

III. Discussion

A common source of appeals in PFD cases is the population of Alaskan students who register to vote or vote in other states, and then learn, to their regret, that their actions have disqualified them from a PFD. Ms. C explains credibly that she was simply about doing her civic duty and did not realize she might be affecting her PFD. The language of the regulation and its prior interpretations do not allow for consideration of motives or extenuating 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; [or]
- (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[.]

Ms. C's registration alone did not disqualify her, because she registered within 60 days of a presidential election and she seems to have done so solely for the purpose of voting in that election. However, when she subsequently voted a state ballot, she "voted in another state's . . .

⁷ It is certain that she cast a ballot in the state elections. It is not entirely certain, but is more probable than not, that she marked votes on the state ballot.

election.” Under Minnesota law, only residents may vote in its state elections.⁸ Thus, Ms. C did not fit in the exception written into subdivision (13), which allows Alaskans to retain PFD eligibility when they vote in another state’s election that is open to nonresidents, because Minnesota does not appear to have elections that are open to nonresidents.⁹

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.¹⁰ 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. C made a mistake with important financial consequences, never intending to affect her PFD eligibility. Other Alaskan students around the country have made similar mistakes in connection with voting, and the Department’s response has been evenhanded, disqualifying all.¹¹ Barring a reinterpretation of the regulation, the absolute rule must be applied in the present case as well.

Voting in another state’s election 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, and in this case the Division has agreed that Ms. C did not sever her residency when she voted in 2012.

IV. Conclusion

Because N C voted in a Minnesota state election in 2012, she is not eligible for the 2013 PFD. The decision of the Permanent Fund Dividend Division to deny her application for a 2013 Permanent Fund Dividend is AFFIRMED.

DATED this 26th day of August, 2014.

⁸ Minnesota Statutes §§ 201.014, 201.071.

⁹ See *In re B.C.*, OAH No. 05-0901-PFD (Commissioner of Revenue 2006), at 5 (similarly analyzing the exception in subdivision (13)) (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD050909.pdf>).

¹⁰ *Church v. State of Alaska; Department of Revenue*, 973 P.2d 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”).

¹¹ *E.g.*, OAH No. 14-0376-PFD (2014); 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>.

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 21st day of September, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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