

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

IN THE MATTER OF)
)
S &)
K O and)
Q O (minor child)) OAH No. 14-2153-PFD
) Agency Nos. 2014-039-1823, 1824 &
) 1811
2014 Permanent Fund Dividend)

DECISION

I. Introduction

S and K O are husband and wife. They each filed an application for the 2014 Permanent Fund Dividend (PFD). K filed for Q (their son) as Q’s sponsor. Mr. and Ms. O’s applications were denied because they registered to vote in Florida. Q’s application was denied because he did not have an eligible sponsor.

The telephonic hearing was held January 16, 2015. Mr. O spoke for the family. For purposes of this decision the division is not arguing that the Os severed their Alaska residency. Therefore, this decision is limited to whether the Os took a disqualifying action rendering them ineligible for the 2014 PFD. The Os registering to vote is a disqualifying act. Mr. O has not established by a preponderance of the evidence that he or his wife did not register to vote in another state during the qualifying year up through the date of application, so the denial of their applications is affirmed. Mr. and Ms. O are the appropriate sponsors for their minor child, Q. Without an eligible sponsor the division must also deny Q’s application for the 2014 PFD.

II. Facts

For purposes of this decision a lengthy recitation of the facts is not necessary. The Os came to Alaska as members of the armed forces. Mr. O received a 2013 PFD; Ms. O and Q received both the 2012 and 2013 PFDs. The family left Alaska for Florida on December 6, 2013 so Mr. O could take advantage of post-service education benefits. He is attending No Name School in Florida. The family believes they will return to Alaska when Mr. O’s schooling is complete in March 2016.¹

Mr. O characterized their registering to vote not as an error but a mistake. When they went to get their driver’s licenses, Mr. O did not recall thinking that he wanted to register to vote in

¹ Exh. 1 at 2.

Florida.² He described it was a “natural instinct” to register to vote, so he and Ms. O registered when they got Florida driver’s licenses.³ Once they found out that it had an impact on their PFD, they took steps to remove themselves from the Florida voter roll.⁴

III. Discussion

The division denied the Os’ applications for the 2014 PFD because it concluded Mr. and Ms. O engaged in a disqualifying action when they registered to vote in Florida. This decision addresses not only Mr. and Ms. O’s eligibility for the 2014 PFD, but also their son Q’s eligibility. A child must have an eligible sponsor.⁵ Because his parents are the proper sponsors, if Mr. and Ms. O are ineligible, then, in this instance, so is Q.⁶

In some cases, eligibility for a PFD may be a subjective inquiry dependent upon the circumstances surrounding the action or inaction. In other cases, PFD eligibility is objective, and turns on strict rules that must be applied without regard to a person’s subjective intent or circumstances. This is such a case.

The qualifying year for the 2014 PFD is 2013.⁷ 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

* * * * *

(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

² Testimony of S. O.

³ *Id.*

⁴ *Id.*

⁵ 15 AAC 23.113(b).

⁶ There are limited exceptions to this rule, none of which are applicable here. *Id.*

⁷ AS 43.23.095(6).

in another state during the specified time period.⁸ 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.⁹

Mr. O was a candid witness. He freely admits that he and his wife intended to register to vote but did not understand that the act of registering would make them ineligible for a PFD. The Os are not the first Alaska residents that have experienced denial because of inadvertent voter registration, and they are unlikely to be the last.¹⁰ Regardless, it is undisputed that the Os did register to vote in another state, even though they gave the matter little thought at the time. Their actions preclude the family from receiving a 2014 PFD.

However, the evidence does not clearly show that they severed their Alaska residency when they registered to vote in Florida. For example, what does the voter registration form state? Does it provide that by registering to vote, a person is claiming Florida residency, or that only Florida residents are able to vote in Florida elections? Therefore, this decision makes no findings regarding the Os' Alaska residency for purposes of the PFD.

IV. Conclusion

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 or she registers to vote in another state between the beginning of the qualifying year and the date of application. S, K, and Q O are not eligible for the 2014 PFD because S and K registered to vote in another state during the qualifying year. Without his parents being eligible to receive a 2014 PFD,

⁸ 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.

⁹ Compare 15 AAC 23.143(d)(10). This regulation provides that a person is not eligible for a PFD if at any time in the qualifying year that person (i) moved from Alaska for a reason other than one listed in statute, and (ii) claimed moving expenses during the qualifying year as a deduction on the individual's federal income tax return. While an objective rule, the Department of Revenue saw fit to provide an applicant with a "cure." An applicant who has claimed moving expenses as a deduction may reverse the action by providing proof of filing an amended tax return deleting the claimed moving expense deduction. 15 AAC 143(d)(10)(B). There is no such "cure" for registering to vote in another state.

¹⁰ *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).

Q did not have an eligible sponsor. Nothing in this decision precludes the family from eligibility for future PFDs. The decision of the division is affirmed.

DATED: January 27, 2015.

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 23rd day of February, 2015.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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