

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

In the Matter of)	
)	
U T-D)	
B M, minor)	
C D, minor)	OAH No. 15-0294-PFD
)	Agency No. 2014-019-1515
<u>2014 Permanent Fund Dividends</u>)	

DECISION

I. Introduction

U T-D (who apparently usually goes by the last name D) is a young woman who has been receiving Permanent Fund Dividends (PFDs) since she was an infant. This case relates to her January 2014 application for a 2014 PFD and the applications she filed on behalf of her two children, then aged 2 and 4.

The Permanent Fund Dividend Division determined that Ms. D was ineligible because she had registered to vote in Nevada during 2013 (the qualifying year). The children were denied as well, on the basis that, if she was not eligible, their applications would lack an eligible sponsor. Ms. D initiated informal appeals 41 days after the denial decisions. The Division rejected the appeals as untimely, and also held to its prior conclusions about underlying eligibility. Ms. D promptly requested a formal hearing, which took place on April 17, 2015.

The Division’s untimeliness decision is reversed, but its denial of Ms. D’s application is nonetheless affirmed on the basis of her voter registration, which disqualified her for the 2014 dividend year. The denial of the children’s applications is vacated, and they are remanded to the Division to evaluate the availability of a substitute sponsor under 15 AAC 23.113(i).

II. Timeliness

The Division issued denial letters on the three applications on July 18, 2014, and sent them to Ms. D by mail.¹ By law, the period to appeal a denial is “30 days after the date of the notice of . . . disallowance.”² Alaska Statute 01.10.080 further provides that when “the last day is a holiday, . . . it is . . . excluded” from the appeal period, and for purposes of applying that

¹ Ex. 3.
² 15 AAC 05.010(b)(5).

particular statute, the courts have held that Sundays are holidays.³ The 30th day from the D denials was Sunday, August 17, and thus by law their deadline to appeal was Monday, August 18. Ms. D did not file her requests for informal appeal on the three denials until August 28, 2014, which was ten days late.

Ms. D can be excused from the deadline if she shows “reasonable cause”;⁴ 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.”⁵ The length of the delay is one factor that is considered when deciding whether strict adherence to the filing deadlines would work an injustice.⁶ Here, the delay in filing was quite short. Most untimely appeal cases involve much longer delays. Hence, the showing needed for relaxation of the deadline is not as onerous in Ms. D’s case as it would be for someone who missed the deadline by months or years.

Ms. D explains that she lost the denial letter and needed to go into the PFD office to get a new appeal form issued to her. As a single mother, without transportation, needing to arrange babysitting for her young children, it took her some time to do this. She had overlooked the deadline when (before losing it) she had the denial paperwork in hand, and thus did not appreciate the urgency of getting to the PFD office. She was distressed to learn that she had gone past the deadline.

In light of this explanation, in light of the very short delay beyond the deadline, and in light of the fact that the PFDs of young children are involved, the ALJ finds that Ms. D has made an adequate showing for a limited relaxation of the informal appeal deadline.

III. Ms. D’s Eligibility

A common source of appeals in PFD cases is the population of Alaskans, many of them students, who register to vote in other states, and then learn, to their regret, that their actions have disqualified them from a PFD. Ms. D does not seem to have a specific recollection of doing so, but the evidence is plain that in 2013, the qualifying year for the 2014 dividend, she registered to vote in Nevada.⁷ There is no evidence that she ever voted there. Nonetheless, the act of registering falls within the list of acts that disqualify an applicant from receiving the subsequent dividend.

³ *E.g., Wade v. Dworkin*, 407 P.2d 587 (Alaska 1965).

⁴ 15 AAC 05.010(b)(5).

⁵ 15 AAC 05.030(k).

⁶ *See In re S.O.*, OAH No. 09-0497-PFD (Commissioner of Revenue 2010); *In re J.J.G.*, OAH No. 09-0363-PFD (Commissioner of Revenue 2009).

⁷ Ex. 9, p. 1. Ms. D admits to having been in Nevada (on a three-week vacation) at the time, and the signature on the application closely matches her signature on other documents in the case file.

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[.]

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. D 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.⁸ 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 can be harsh. Ms. D made a mistake with important financial consequences, probably never intending to affect her PFD eligibility. Other Alaskans around the country have made the same mistake, and the Department’s response has

⁸ *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”).

been evenhanded, disqualifying all.⁹ Barring a reinterpretation of the regulation, the absolute rule must be applied in this case.

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 as a finding that Ms. D severed her Alaska residency at any time during 2013.

IV. The Children's Eligibility

The issue of timeliness of the informal appeal requests on behalf of the children has been resolved above. The only remaining basis for denying the two- and four-year-olds the dividend is the determination that Ms. D was not herself eligible for a dividend (in general, sponsors must be eligible themselves¹⁰). In this kind of situation, regulation 15 AAC 23.113(i) permits the Division to work with the family to substitute an eligible sponsor, and, to its credit, it is the Division's practice to do this where practicable. Here, the evidence taken at hearing indicates that the children live in their grandparent's household in Anchorage, which suggests that a substitute sponsor may be readily available. The children's applications will be remanded to the Division to permit the Division to evaluate any substitute sponsors in the household.

V. Conclusion

The denial of the 2014 PFD application for U T-D is affirmed on the basis that she registered to vote in another state during 2013 at a time that was not within 60 days of a presidential election. The denial of the 2014 PFD applications of B M and C D is vacated, and those applications are remanded to the PFD Division for evaluation of a 15 AAC 23.113(i) sponsor substitution.

DATED this 20th day of April, 2015.

By: Signed
Christopher Kennedy
Administrative Law Judge

⁹ 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>.

¹⁰ See 15 AAC 23.113(b)(1).

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 19th day of May, 2015.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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