

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

In the Matter of)	
)	
F D)	OAH No. 17-0388-PFD
_____)	Agency No. 2016-024-3904

DECISION

I. Introduction

F D applied for a 2016 Permanent Fund Dividend (PFD). The Department of Revenue, Permanent Fund Dividend Division (Division) denied Mr. D’s application because he indicated on his application that he accepted full-time, permanent employment outside of Alaska during 2015 and prior to his date of application. Mr. D requested an informal appeal and was again denied. Mr. D then requested a formal hearing.

A formal hearing was held on May 30, 2017. Mr. D appeared in person and represented himself. PFD Specialist Bethany Thorsteinson represented the Division by telephone.

This decision concludes that Mr. D does not qualify for a 2016 dividend because he did not meet his burden of proof to show that he did not accept full-time, permanent employment outside of Alaska during 2015 and prior to his date of application. Accordingly, the Division’s denial of Mr. D’s application is affirmed.

II. Facts

The material facts are not in dispute. Mr. D filed a 2016 PFD application on February 2, 2016. He signed the application certifying the information in the application was true and correct. In his application, Mr. D reported continuous Alaska residency since August 22, 1990. Mr. D answered “yes” to the question in the application whether, at any time since December 31, 2014, he had accepted full-time, permanent employment in another state or country. At the hearing, Mr. D confirmed that he worked for a company in California from September 2013 through April 1, 2015. Mr. D also testified, however, that he never claimed residency in California and maintained his residency in Alaska.

III. Discussion

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case Mr. D, has the burden of proving by a preponderance of the evidence that the denial is incorrect.¹

¹ 15 AAC 05.030(h).

Mr. D was a credible witness and testified candidly regarding his employment out of state. However, the PFD eligibility requirements are strict. Some of these requirements are found in 15 AAC 23.143(d). This regulation sets out a list of actions that will disqualify a PFD applicant, regardless of the applicant's Alaska residency status, if the applicant takes one of these actions during the PFD qualifying year. The qualifying year in this case was 2015. One of these actions is for the PFD applicant to have accepted full-time, permanent employment outside of Alaska not within one of the allowable exceptions.

The relevant regulation reads:

(d) An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has

* * *

(4) accepted full-time, permanent employment in another state or country except while on an absence listed

(A) in AS 43.23.008(a)(1)-(3), (9)-(11), or (16);

or

(B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph.^[2]

Mr. D disclosed his employment outside of Alaska in his PFD application. At the hearing, Mr. D candidly testified that he did not dispute the characterization of his employment in California as full-time, permanent employment.³ The question is then whether one of the exceptions applies to Mr. D; they do not. The exception in 15 AAC 23.143(d)(4)(B) is inapplicable to Mr. D. Mr. D does not assert, nor is there evidence proving, that his outside employment fits under one of the exceptions in 15 AAC 23.143(d)(4)(A).⁴

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² 15 AAC 23.143(d)(4).

³ D Testimony.

⁴ The Division also denied Mr. D's application under 15 AAC 23.143(d)(2), which Mr. D disputed. That issue need not be reached because, on the undisputed facts, Mr. D is clearly ineligible under 15 AAC 23.143(d)(4). Mr. D asserted that the Division's denial violated his state and/or federal constitutional right to equal protection. This Decision expresses no opinion on that claim because the claim was not meaningfully developed. *Petersen v. Mutual Life Ins. Co.*, 803 P. 2d 406, 410 (Alaska 1990) (holding point given mere cursory treatment not considered on appeal).

IV. Conclusion

Mr. D’s full-time, permanent employment in another state during the qualifying year makes Mr. D ineligible for a 2016 PFD. The Division’s denial of the application of Mr. D for a 2016 permanent fund dividend is therefore AFFIRMED.

DATED: June 12, 2017.

By: Signed
David J. Mayberry
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 6th day of July, 2017.

By: Signed
Signature
David Mayberry
Name
Administrative Law Judge/OAH
Title

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