

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
N T-O) OAH No. 17-0696-PFD
) Agency No. 2015-017-1230
_____)

DECISION AND ORDER

I. Introduction

N T-O appealed the Permanent Fund Dividend Division’s decision denying his 2015 Permanent Fund Dividend (PFD) application.¹ A telephonic hearing was held on August 1, 2017. Bethany Thorsteinson presented the Division’s position and Mr. T-O represented himself, with a Spanish interpreter’s assistance.

The record and prior Office of Administrative Hearing decisions demonstrate that Mr. T-O does not have refugee status and is scheduled for deportation once his children reach adulthood. Because of this immigration status, Mr. T-O is ineligible for the PFD.

II. Facts

Mr. T-O has come before the Office of Administrative Hearings eight times since the end of 2015.² On February 2, 2016, a final administrative decision issued in OAH case number 15-1412-APA finding that Mr. T-O is a non-qualified alien for purposes of public assistance programs.³ Mr. T-O did not appeal the decision. That decision details Mr. T-O’s Cuban citizenship and immigration status. The detailed history of Mr. T-O’s immigration status will not be repeated here.

In sum, Mr. T-O does not have legal refugee status and removal proceedings (deportation) will begin against him once his children have reached adulthood.⁴ He remains under an active Order of Supervision.⁵ The Division confirmed Mr. T-O’s immigration status with Tim Brady, of the United States Citizenship and Immigration Services on June 2, 2017.⁶

¹ Ex. 5, pg. 1.

² See OAH Nos. 15-1412-APA, 16-0199-CMB, 16-0811-PFE, 16-0893-APA, 16-1374-ATP, 17-0696-PFD, 17-0710-PFE, 17-0808-APA.

³ Ex. 10.

⁴ Ex. 10; Thorsteinson testimony.

⁵ Ex. 10.

⁶ Ex. 3; Thorsteinson testimony.

Mr. T-O applied for and received PFDs from 1989 through 2014.⁷ Mr. T-O marked that he was either a resident or refugee on his PFD applications.⁸ He also applied for PFDs in 2015 through 2017.⁹ In 2015, the Office of Inspector General, Social Security Administration informed the Division that Mr. T-O did not hold legal U.S. immigration status.¹⁰ Mr. T-O does not have refugee or asylum status.¹¹

The Division sought to recoup payment for the 2011 through 2014 PFDs issued to Mr. T-O, which were issued based on his inaccurate reporting of his immigration status.¹² The Division also denied Mr. T-O's 2015 and 2016 PFD applications.¹³ Mr. T-O appealed the 2015 PFD denial.¹⁴ The Division upheld the denial after an informal appeal.¹⁵ The Division found him ineligible based on his immigration status and he provided intentionally deceptive information on his application.¹⁶

At hearing, Mr. T-O testified that he has been in the country many years and believes he has refugee status. Also, he believes that he should be eligible because an immigration judge has not determined that he is not a refugee.

III. Discussion

Among other PFD eligibility requirements, an individual must be either a:

- Citizen of the United States;
- An alien lawfully admitted for permanent residence in the United States;
- An alien with refugee status under federal law, or
- An alien that has been granted asylum under federal law.¹⁷

Mr. T-O does not fall under any of these categories and is ineligible for the PFD. Furthermore, Mr. T-O's immigration status (slated for later deportation) prevents him from

⁷ Ex. 2.

⁸ Ex. 11.

⁹ Ex. 2.

¹⁰ Ex. 3; Thorsteinson testimony.

¹¹ Ex. 3; Ex. 10; Thorsteinson testimony.

¹² The Division could not seek recoupment of the earlier PFDs due to a six-year status of limitations.

¹³ Ex. 2.

¹⁴ Ex. 5. Mr. T-O sent in a Request for Informal Appeal form. On it, he crossed off his 2013 PFD application number and wrote in the 2015 PFD application number. Based on this, the Division assumed that Mr. T-O only appealed the 2015 denial. At hearing, Mr. T-O did not contest the Division's interpretation or attempt to add additional denials into this appeal.

¹⁵ Ex. 6.

¹⁶ Ex. 6. Issue A & B are both based on Mr. T-O's immigration status.

¹⁷ AS 43.23.005(a)(5).

legally forming the intent to remain indefinitely in Alaska, another requirement for the PFD.¹⁸ Lastly, prior administrative decisions on the same issue are controlling absent a change in circumstance.¹⁹ Although Mr. T-O's previous cases involved the Department of Health and Social Services benefits, not the PFD, his immigration status is now well-established in OAH cases. Absent a change in immigration status, which he must prove, Mr. T-O will remain ineligible for the PFD and Department of Health and Social Services benefits.

Finally, the Division contends that Mr. T-O provided intentionally deceptive information on his PFD applications when he listed himself as a refugee under federal law.²⁰ While the record wholly supports finding that Mr. T-O does not have refugee status under federal law, Mr. T-O continues to believe that he is or should be categorized as a refugee. Because Mr. T-O is ineligible based solely on his immigration status, this decision will not address whether he provided intentionally deceptive information on his application.

IV. Conclusion

Mr. T-O has the burden to establish his eligibility for the PFD.²¹ He did not meet that burden.

Dated: August 7, 2017

Signed

Bride Seifert

Administrative Law Judge

¹⁸ See Ex. 7; *In re HQ*, OAH No. 13-0778-PFD; See also *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 75 (Alaska 2001).

¹⁹ Ex. 10, OAH 16-0893-APA, an appeal by Mr. T-O of the Department of Health and Social Services decision that he is ineligible for public assistance benefits.

²⁰ Ex. 6; Position statement.

²¹ 15 AAC 05.030(h).

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 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 September, 2017.

By: Signed
Signature
Bride Seifert
Name
Administrative Law Judge
Title

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