

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

In the Matter of	)	
	)	
N T-O, B & F T-O (MINORS)	)	OAH No. 18-0288-PFD
	)	Agency No. 2017-052-9492/93/94
_____	)	

**FINAL DECISION AFTER REMAND**

**I. Introduction**

N T-O appealed the Permanent Fund Dividend Division’s decision denying his 2017 Permanent Fund Dividend (PFD) application, as well as the applications of his two minor children, for whom he was the sponsor at that time.<sup>1</sup> A hearing was held on May 7, 2018. Robert Pearson appeared telephonically and presented the Division’s position. Mr. T-O appeared in person and testified on behalf of himself and his minor children, with a Spanish interpreter’s assistance. Mr. T-O was also accompanied and assisted by his church pastor, M T.

A proposed decision was issued on May 23, 2018, upholding the denial of all three dividends. Deputy Commissioner Mike Barnhill, acting as the Commissioner’s Delegate, remanded the case to the administrative law judge for additional work on the children’s eligibility. After remand, the parties agreed to mediation. The mediation, coupled with related proceedings in Superior Court, led to resolution of the eligibility problem for the children. Their dividends have now been paid through a different sponsor, and their appeals are now moot. The sole issue remaining for final decision is the eligibility of N T-O.

Prior Office of Administrative Hearing (OAH) decisions, and the record developed at the hearing, demonstrate that Mr. T-O’s immigration status has not changed since the denial of his 2015 PFD was upheld by a prior decision of the Department of Revenue. Because that decision is binding on the Department, Mr. T-O is ineligible for the 2017 PFD.

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<sup>1</sup> Exh. 5, pg. 1.

## II. Facts

Mr. T-O has come before the Office of Administrative Hearings a total of nine times since the end of 2015; this is his second appeal of a PFD denial.<sup>2</sup> On February 2, 2016, a final administrative decision was issued in OAH case number 15-1412-APA, finding that Mr. T-O is a non-qualified alien for purposes of public assistance programs.<sup>3</sup> Mr. T-O did not appeal the decision. That decision details Mr. T-O's Country A citizenship and immigration status. The detailed history of Mr. T-O's immigration status will not be repeated here. It is sufficient to note that his immigration status is properly categorized as "under an active Order of Supervision, subject to deportation."

Subsequent to the issuance of the decision in case number 15-1412-APA, Mr. T-O's application for a 2015 PFD was denied, and he appealed. The Division upheld the denial after an informal appeal; an administrative law judge from OAH conducted a hearing on his formal appeal; and the denial was affirmed in a decision that confirmed that Mr. T-O's immigration status makes him ineligible for a PFD.<sup>4</sup>

In the current matter, Mr. T-O's 2017 PFD application was denied on September 15, 2017.<sup>5</sup> He filed a timely informal appeal,<sup>6</sup> which was denied on March 9, 2018.<sup>7</sup> Mr. T-O filed a formal appeal on March 19, 2018.<sup>8</sup>

At the hearing on his formal appeal, Mr. T-O testified that he has been in the country many years and he believes he has refugee status. Also, he believes that the denial of his eligibility is unjust because he cannot return to Country A, he cannot obtain public assistance in order to feed his children,<sup>9</sup> and the denial appeared to mean that his children would also be found ineligible for PFDs.

## III. Discussion

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<sup>2</sup> 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.

<sup>3</sup> See Final Decision in OAH 15-1412-APA, Mr. T-O's first appeal of the Department of Health and Social Services decision that he is ineligible for public assistance benefits, attached hereto.

<sup>4</sup> See Final Decision in OAH case No. 17-0696-PFD, submitted by the Division as Exh. 6, and attached hereto.

<sup>5</sup> Exh. 2; Exh. 7, p. 2.; Exh. 8, p. 2.

<sup>6</sup> Exh. 3; Exh. 7, p. 3; Exh. 8, p. 3.

<sup>7</sup> Exh. 5; Exh. 7, p. 5; Exh. 8, p. 5.

<sup>8</sup> Exh. 9.

<sup>9</sup> Mr. T-O's own ineligibility for public assistance benefits should not prevent him from obtaining such benefits for his children.

Mr. T-O has the burden of proof to establish that he is eligible for the PFD.<sup>10</sup>

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.<sup>11</sup>

Prior decisions establish that Mr. T-O does not fall under any of these categories and is ineligible for the PFD. Furthermore, Mr. T-O's immigration status (subject to deportation) prevents him from legally forming the intent to remain indefinitely in Alaska, another requirement for the PFD.<sup>12</sup>

In the context of this case, it is important to understand that prior administrative decisions on the same issue are controlling absent a change in circumstance.<sup>13</sup> Mr. T-O's immigration status has been well-established in his prior OAH cases involving his 2015 PFD and public assistance benefits. He was advised of his right to appeal each of the prior decisions discussed in this case, and he did not appeal any of them. Absent a change in immigration status, which he must prove, Mr. T-O will remain ineligible for PFDs.

While the record wholly supports finding that Mr. T-O does not have refugee status under federal law, Mr. T-O apparently continues to believe that he is or should be categorized as a refugee. He vociferously argued that the denial of his 2017 PFD and his children's 2017 PFDs is unjust, because he needs the money to support his children, he cannot return to Country A, and he is disabled and unable to work. However, he failed to present any evidence to show any change to his immigration status, the critical issue in this case, since the issue was addressed in his prior case regarding his 2015 PFD. As mentioned, that decision is binding in this matter.

#### **IV. Conclusion**

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<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> AS 43.23.005(a)(5).

<sup>12</sup> See *In re HQ*, OAH No. 13-0778-PFD; see also *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 75 (Alaska 2001).

<sup>13</sup> See Final Decision in OAH case No. 17-0696-PFD; see also Final Decision in OAH 16-0893-APA, a second appeal by Mr. T-O of the Department of Health and Social Services decision that he is ineligible for public assistance benefits, attached hereto.

Mr. T-O presented no evidence that his immigration *status [ouch]* has changed since the prior decision finding him ineligible for a PFD. Therefore, he is ineligible for the 2017 PFD. The appeals of his children are moot and will not be addressed here.

RECOMMENDED this 27<sup>th</sup> day of November, 2018.

By: Signed  
Andrew M Lebo  
Administrative Law Judge

### Adoption

This Order is issued under the authority of 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 30<sup>th</sup> day of November, 2018.

By: Signed  
Signature  
Mike Barnhill  
Name  
Deputy Commissioner  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]