

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

IN THE MATTER OF

OAH No. 06-0748-PFD

N.S.

f/k/a

N.T.

1982 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

N.S. applied for a 1982 permanent fund dividend (PFD) when she became an adult. The Permanent Fund Dividend Division (Division) determined that Ms. S. was not eligible, and it denied the application initially and at the informal appeal level. Ms. S. requested a formal hearing by correspondence.

The Division filed a Motion to Dismiss Ms. S.'s request for formal hearing by correspondence. The Division argued that the appeal was not timely filed and, therefore, should be dismissed.

The Administrative Law Judge denies the Division's motion and orders the Division to pay Ms. S. a 1982 PFD.

II. Facts

The evidence shows Ms. S. is eligible for a 1982 PFD and that it would work an injustice to strictly apply the deadline in this case and dismiss Ms. S.'s appeal. Furthermore, based on the evidence in the record, I find that it is more likely than not that Ms. S.'s mother was an Alaska resident from April 18, 1982 through October 15, 1982.

Ms. S. was born in Alaska on October 15, 1982 to a military family. They arrived in Alaska in April 1982. Her mother did not apply for a 1982 dividend for her daughter because she did not believe that her daughter qualified based on her date of birth.¹ Nor did she file for

¹ Exhibit 1 at 3.

herself because she was unsure if she qualified. Ms. S. and her mother received dividends from 1983 through 1985.²

Before leaving Alaska, Ms. S. contacted the Division regarding her daughter's, Ms. S.'s, 1982 dividend. The Division responded by letter dated August 2, 1985 recommending that:

It would be best for your child to file an adult application as "First Time Filing" When she turns 18. Should you file for your child now, she will be Denied for the 1982 Dividend. Should she wait to file an adult application when she turns 18, she will receive her 1982 Dividend upon approval of her "First Time Filing" application. All resident children have one here from their 18th birthday to file for any previous year not already filed for.

At this point your only other option would be to complete the enclosed Appeal form. This would provide you with the proper procedure to express any problem you may have with the process...³

On July 17, 2001, Ms. S.⁴ filed a Prior Year Dividend Claim and Detail Sheet for 1982 naming her mother as the adult sponsor. Because her mother did not apply for a dividend in 1982, the Division asked Ms. S. to have her mother complete and return a 1982 Adult Application along with proof of her mother's arrival in Alaska if she arrived before April 15, 1982. The Division provided Ms. S. with 30 days to provide the additional information or her application would be denied.

Ms. S. did not provide the requested information. Her claim for a 1982 dividend was denied for failure to provide the requested information⁵ and for failure to have an eligible sponsor⁶. She timely appealed arguing that the information sought was stored and needs to be located and that she did "not understand the relevance of [her mother's eligibility as a sponsor] because, the letter sent August 2, 1985 to my mother Made it seem as if her eligibility was not that pertinent to my receiving the 1982 PFD and that if I filed at the appropriate time I would receive compensation for any year not previously filed."⁷ Ms. S. wrote several more letters informing the Division of steps she was taking to locate the 20-year-old records the Division had

² Exhibit 15 & Division's Response to Order dated March 2,2007.

³ Exhibit 12 at 7.

⁴ Under her maiden name ot*T]

⁵ 15 A A C 23.173(a), (b)&(c).

⁶ 15 AAC23.410(2)(c).

⁷ Exhibit _____

requested.

The Division issued its informal decision denying the appeal on April 30, 2003. The informal decision did notify Ms. S. that she had 30 days to request a formal appeal, but the decision also incorrectly informed Ms. S. that "to have this decision reversed, you must provide all of the following: Proof that [she] had an eligible sponsor."⁸

Ms. S. had no further contact with the division until October 2006 when she filed a request for formal hearing. From April 30, 2003 through October 2006, Ms. S. had encountered "several impediments that prevented [her] from providing or obtaining the requested information." Because Ms. S. admits she did not timely appeal the April 30, 2003 informal decision, the Division moved to dismiss the request for formal hearing as untimely.

III. Discussion

A review of the evidence in the record and the regulations that apply to eligibility for a 1982 PFD reveals that the Division did not apply the correct law to the facts in its records. The Division's review of Ms. S.'s application did not properly analyze the evidence in its possession at the time Ms. S. applied. Proper application of the relevant law to this evidence should have resulted in payment of her 1982 PFD. No additional information should have been requested. This would have rendered Ms. S.'s appeal unnecessary rather than untimely. The information the Division requested was not relevant Ms. S.'s eligibility for a 1982 PFD and delayed her appeal. The Division also provided incorrect legal advice to Ms. S. its informal decision, which delayed her appeal of that decision.

The Division did not need to determine whether or not Ms. S.'s mother was eligible for the 1982 dividend in order to determine that Ms. S. was eligible for the 1982 dividend.⁹ The Division needed to determine only that Ms. S. was born in Alaska to an Alaska resident during the 1982 PFD qualifying period. The Division had already made this determination in 1983. Both Ms. S. and her mother received 1983 dividends.¹⁰ The qualifying Alaska residency period for the 1983 PFD was October 3, 1982 through March 31, 1983." Therefore, the Division has already determined that Ms. S.'s mother was a resident of Alaska as of October 3, 1982. Because her mother was an Alaska resident as of October 3, 1982, and Ms.

⁸ Exhibit 10 at 2. (emphasis in original).

⁹ 15 AAC 23.111(2).

¹⁰ Exhibit 15 & Division's Response to Order dated March 2, 2007.

" Exhibit 15 at 4.

S. was bom in Alaska on October 15, 1982, she was born to an Alaska resident during the qualifying period for the 1982 PFD, which was April 18, 1982 thorough October 15, 1982.¹²

As authority for its request for documentation that would show that Ms. S.'s parents eligibility for a 1982 PFD the Division referred to former Alaska regulation 15 A A C 23.410(2)(c).¹³ This regulation did require that a child born during the 1982 PFD qualifying period child have a sponsor that had been an Alaska resident for "at least six months prior to the child's date of application." The child application deadline was November 15, 1982, so if this regulation applied it would have required one of Ms. S.'s parents to have been a resident by May 15, 1982. This regulation, 15 A A C 23.410(2)(c), was however, repealed and superseded by 15 A A C 23.111(2) in 1989. Under former regulation 15 A A C 23.111(2), which specifically applies only to 1982 PFDs, there is no requirement that a child bom in Alaska between April 18, 1982 and October 16, 1982 have a sponsor who was a resident by May 15, 1982. The child needed only to be bom to, and in the custody of, an Alaska resident in order to qualify for a 1982 PFD. Former 15 A A C 23.140(b), which only applies to the 1982 PFD when it does not conflict with the more specific language in 15 A A C 23.111(2), requires only that a child be *born to an Alaska resident*, during the qualifying period. There is no requirement that a child have an eligible sponsor who is *an adult eligible for the relevant PFD* as is required for eligibility for later PFDs under 15 A A C 113. Current regulation 15 A A C 23.133 requires that an applicant for a prior year PFD have been eligible for the dividend had an eligible sponsor applied for the child during the pertinent dividend year. This sends us back to the question of what the requirements for an eligible sponsor were for the 1982 PFD as those requirements pertain to the facts of this case. Those requirements are found in former 15 A A C 23.111(2), which superseded former 15 A A C 23.410(2)(c).

For Ms. S. to have received a dividend in 1982, it was only necessary to show she was bom in Alaska and before the deadline and that her mother was an Alaska resident from when Ms. S. was born through the deadline, October 15, 1982. The Division had the documentation that showed that she was bom in Alaska before the 1982 PFD deadline because her 1983 PFD application was paid. Furthermore, the Division had already determined that Ms. S.'s mother was an Alaskan resident when Ms. S. was born, because both of their 1983

¹² Former Regulation 15 A A C 23.140.

¹³ Ex. 10&14.

PFD applications were paid. There was no requirement that a child be sponsored by an "eligible" adult in the sense that the adult was eligible for the 1982 PFD.¹⁴ That requirement applies to eligibility for later PFDs.¹⁵ Similarly, the Division applied the incorrect law to Ms. S.'s eligibility for a 1982 PFD in its position paper when it argued that she was ineligible because her parents did not apply for their own 1982 PFDs. Because she was born during the 1982 qualifying year to a parent who was an Alaska resident when she was born, Ms. S.'s parents did not need to be eligible and did not need to apply for a 1982 PFD. If the Division was correct with this argument it would have been futile to ask her to try to establish her parents' residency as of April 18, 1982. The Division also had a signed statement by Ms. S.'s mother, Ms. T., explaining that the reason she did not apply did not apply for her daughter. This statement is on a part of the form that was completed by Ms. T. and includes residency verifications that to the best of Ms. S.'s knowledge both parents were Alaska residents from April 18, 1982 through October 15, 1982.

The Division provided incorrect legal advice when it told Ms. S. that she needed to have proof of an eligible sponsor if she wanted her claim to be approved.¹⁶ The record indicates that Ms. S. delayed filing her appeal due to her attempt to follow this advice. Furthermore, this appeal should not have needed to have been filed. Ms. S.'s 1982 PFD application should have been granted when she applied because the Division records showed her birth date and her and her mother's eligibility for 1983 PFDs. Instead the Division requested additional, twenty year-old, documentation which, if it existed, would have been in the control of the third party who had failed to timely apply in the first place, because the Division incorrectly applied the eligibility requirements for later PFDs to Ms. S.'s application for a 1982 PFD. Under these facts strict adherence to the formal appeal deadline would work an injustice.

The Division's confusion about which regulations apply in this case is understandable, given the complex interrelationship of old regulations governing the 1982 PFD eligibility requirements. The result of the proper application of these old eligibility requirements, that Ms. S. was eligible for a 1982 PFD, is also counterintuitive from the perspective of someone who is accustomed to enforcing the newer sponsorship requirements that have now been in effect

¹⁴ 15 A A C 23.113.

¹⁵ 15 A A C 23.113 was first adopted in 1993. Former 15 A A C 23.115, which applies to 1990 & 1992 PFDs also required only being born to and in the custody of an Alaska resident.

¹⁶ Exhibit 10 at 2.

for many years. The 1982 PFD was the first PFD. The rules that applied to eligibility were in many ways unique.

IV. Conclusion

The appeal deadline should be waived. The Division's Motion to dismiss should be denied. Ms. S. is eligible for a 1982 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the application of N.S. for a 1982 permanent fund dividend be GRANTED.

DATED this 19th day of April, 2007.

By: Mark T. Handley
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of May, 2007.

By: Mark T. Handley
Administrative Law Judge

The undersigned certifies that
this date an exact copy of the
foregoing was provided to the
following individuals:
PFD Division
5/15/07