

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

IN THE MATTER OF	)	OAH No. 13-0029-PFD
K J	)	Agency No. 2012-057-8290
	)	
<u>2012 Permanent Fund Dividend</u>	)	

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

K J’s timely applied for a 2012 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) determined that Ms. J was not eligible, and it denied the application. Ms. J filed a late request for an informal appeal and the division upheld the denial of her 2012 PFD application in an informal appeal decision based on her late appeal. Ms. J then filed a late request for a formal hearing. The hearing was held on February 19, 2013. Ms. J participated. PFD specialist Bethany Thorsteinson represented the division in person. The division moved to dismiss the case. The administrative law judge grants the motion.

**II. Facts**

Ms. J’s 2012 PFD application was denied because the division determined that in 2011 she was sentenced as a result of a felony conviction.<sup>1</sup> The denial letter for her 2012 PFD was issued on August 17, 2012. This denial letter provided notice that Ms. J had thirty days, or until September 16, 2012 to file a request for an informal appeal.<sup>2</sup> Ms. J did not file a request for a formal hearing within thirty days. Ms. J filed her request for an informal appeal in an envelope that was postmarked September 25, 2012. This means that Ms. J filed her request for an informal appeal several days after the thirty day deadline.<sup>3</sup> The division then issued an informal appeal decision denying the appeal because it was late.<sup>4</sup>

Ms. J filed her request for a formal hearing.<sup>5</sup> At the hearing, Ms. J explained that she thought she should receive a 2012 PFD because the plea that led to her conviction had been set aside and she was scheduled for a change of plea hearing. Ms. J explained that she has reason to hope that the felony charge will be dismissed.<sup>6</sup>

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<sup>1</sup> Exhibit 2.  
<sup>2</sup> Exhibit 4, page 3.  
<sup>3</sup> Exhibit 5.  
<sup>4</sup> Exhibit 6.  
<sup>5</sup> Recording of Hearing.

### **III. Discussion**

A person who wishes to appeal the denial of a permanent fund dividend must file a request for an informal appeal within thirty days of the day the division issues the denial letter.<sup>7</sup> This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.<sup>8</sup>

Ms. J's request for an informal appeal was not filed until several days after the passing of the 30-day deadline. Ms. J did not provide a reasonable excuse for the delay.

As discussed at the hearing, Ms. J can request her 2012 PFD, within 60 days of the dismissal of her felony conviction. There is a provision in the PFD eligibility statutes that disqualifies Alaska residents who are in state custody during the PFD qualifying year as the result of a felony conviction.<sup>9</sup> There is also regulation that explicitly provides that an otherwise eligible individual who is disqualified because she disqualified as the result of a felony conviction that is subsequently overturned will become eligible. Alaska Regulation 15 AAC 23.183(b) provides:

(b) An individual who was correctly identified as incarcerated or sentenced for an offense as described in AS 43.23.005 (d), and consequently was denied a dividend, may appeal a denial of a dividend issued under AS 43.23.005(d) within 60 days of the reversal or vacating of the disqualifying convictions for which the individual was incarcerated or sentenced. The department will overturn any denial of an individual who

(1) has a valid appeal of the individual's dividend denial pending before the department or a court;

(2) can demonstrate to the department's satisfaction that all disqualifying convictions for which the individual was incarcerated or sentenced during the qualifying year for that dividend have been vacated or reversed; and

(3) is otherwise eligible for the dividend.

Because the Division properly denied her 2012 PFD and Ms. J can seek relief at the proper time if her conviction is dismissed under 15 AAC 23.183(b), there is no apparent injustice that would result from strict adherence to the normal appeal deadline.

### **IV. Conclusion**

Ms. J did not request an informal appeal to appeal the denial of her application for her 2012 permanent fund dividend within the appeal period established by law. Normal application of the

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<sup>6</sup> Recording of Hearing.

<sup>7</sup> 15 AAC 05.010(b)(5).

<sup>8</sup> 15 AAC 05.030(k).

<sup>9</sup> AS 43.23.005(d)(2)(A).

appeal deadline will not work an injustice in this case. The division's motion to dismiss the appeal is granted. No further proceedings will be scheduled in this matter. The division's denial of Ms. J's application for a 2012 permanent fund dividend will stand.

DATED this 21st day of February, 2013.

By: Signed  
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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 20<sup>th</sup> day of March, 2013.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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