

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

IN THE MATTER OF)	OAH No. 13-0991-PFD
T S K)	Agency No. 2010-066-8116
)	
<u>2010 Permanent Fund Dividend</u>)	

ORDER GRANTING MOTION TO DISMISS¹

I. Introduction

H U applied for a 2010 permanent fund dividend (PFD) for her son, T S K. The Permanent Fund Dividend Division (“the division”) denied the application. Ms. U filed a late request for an informal appeal and the division upheld the denial of her 2010 PFD application for S in an informal appeal decision based on her late appeal. Ms. U then filed a late request for a formal hearing. The hearing was held on September 10, 2013. Ms. U 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. U’s 2010 PFD application for T was denied because the division determined that Ms. U was not eligible because her own 2010 PFD application was filed after the deadline, as a result, T did not have an eligible sponsor for the 2010 PFD.² The denial letter for T’s 2010 PFD was issued on February 15, 2011.³ This denial letter provided notice that Ms. U had thirty days, or until March 17, 2011 to file a request for an informal appeal.⁴ Ms. U did not file a request for a informal appeal within thirty days. Ms. U’s request for an informal appeal was received on January 17, 2012.⁵ This means that Ms. U filed her request for an informal appeal 298 after the thirty day deadline. The division then issued an informal appeal decision denying the appeal because it was late.⁶ Ms. U then filed her request for a formal hearing 342 after the thirty day deadline for filing this second appeal.⁷

¹ In the Matter of T S K a proposed Order Granting Motion to Dismiss was issued and distributed to the parties. The Division filed a notice of a typographical error discovered in the agency case number on the proposed decision. Therefore, this corrected decision is issued in place of the original proposed decision and the decision is adopted. This corrected decision is issued under the authority of 2 AAC 64.350(b).

² Exhibit 5.

³ Exhibit 5 page 1.

⁴ Exhibit 5, pages 1 & 2.

⁵ Exhibit 7.

⁶ Exhibit 8.

⁷ Exhibit 9.

Ms. U's 2008 through 2009 PFD applications were denied because the division determined that she had moved out of Alaska. In the appeal of her 2011 PFD, the Division determined that Ms. U had not re-established her Alaska residency until September 22, 2009. The division's findings indicate that Ms. U and T are not eligible for a 2010 PFD.⁸

At the hearing, Ms. U explained that she thought she and T should both receive 2010 PFDs because she had thought she filed both 2010 PFD applications electronically on the day of the application deadline. Ms. U explained that she must have only filed one application by mistake. Ms. U explained that when she filed T's application, she was on medication because she was recovering from surgery on her neck. At the hearing, Ms. U did not explain why she had not filed her request for an informal appeal or a formal hearing before the deadlines.⁹

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.¹⁰ Similarly, someone who wishes to appeal the denial of a permanent fund dividend that was upheld in an informal appeal must file a request for a hearing within thirty days of the day the Division issues the informal appeal decision.¹¹ Both of these deadlines may be waived if strict adherence to the normal appeal deadlines would work an injustice.¹²

Ms. U's request for an informal appeal and her request for a formal hearing were not filed until several months after the passing of the 30-day deadlines. Ms. U did not provide reasons for missing these deadlines that would excuse her filing both appeals several months late. These are not circumstances that would create an injustice to enforce the appeal deadline. Alaskans who wish to appeal the denial of a PFD application must file an appeal before the deadline.

The fact that it is Ms. U who missed these appeal deadlines rather than the child T does not make strict adherence to the appeal deadlines an injustice. Children who were otherwise eligible, but had late applications, can be paid if they file again within a year after they become adults.¹³ T had a timely filed 2010 PFD application, but the Division has determined that he is not eligible. If

⁸ Division's position statement, page 4.

⁹ Recording of Hearing-Testimony of Ms. U.

¹⁰ Alaska Regulation 15 AAC 05.010(b)(5).

¹¹ 15 AAC 05.030(a).

¹² 15 AAC 05.030(k).

¹³ See 15 AAC 23.133(b)

he was eligible, the fact that Ms. U did not timely file her own 2010 PFD application would not disqualify T. The PFD sponsorship requirements only require a sponsor who would have been eligible if the sponsor had timely filed.¹⁴ T is not eligible for a 2010 PFD because his sponsor, Ms. U, did not re-establish her Alaska residency until after January 1, 2009, the beginning of the 2010 PFD qualifying year. T was not disqualified because of Ms. U's late application. There is no apparent injustice that would result from strict adherence to the normal appeal deadlines.

IV. Conclusion

Ms. U did not request an informal appeal or a formal hearing to appeal the denial of her application for T's 2010 permanent fund dividend within the appeal periods established by law. Normal application of the appeal deadlines 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. U's application for the child, T S K, for a 2010 permanent fund dividend will stand.

DATED this 31st day of October, 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 31st day of October, 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.]

¹⁴ 15 AAC 23.133(b)(1).