

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

In the Matter of:	)	
	)	
N O	)	
	)	OAH No. 13-1748-PFD
<u>2013 Permanent Fund Dividend</u>	)	Agency No. 2013-067-1399

**DECISION**

**I. Introduction**

N O applied for a 2013 Permanent Fund Dividend (PFD).<sup>1</sup> The Permanent Fund Dividend Division (division) denied his application for two reasons. First, because Mr. O has been incarcerated during 2012 as a result of a felony conviction, and second, because his application was not filed by the application due date.<sup>2</sup> After exhausting his informal appeal rights, Mr. O requested a formal hearing.<sup>3</sup>

As permitted by 15 AAC 05.030(g), Mr. O’s hearing request asked for a hearing by correspondence. Mr. O and the division submitted written explanations of their legal and factual positions. Based on the written submissions and the applicable law, the division’s denial of Mr. O’s application is upheld.

**II. Facts**

The relevant facts are not in dispute. Mr. O was incarcerated during 2012 for a felony conviction. In addition, it is not disputed that he did not submit his application until August of 2013. As discussed below, however, Mr. O raises reasonable arguments for why his PFD could have been assigned to either the Child Support Services Division or to the Alaska Post-Secondary Education Commission as he owes money to both of those state agencies.

**III. Discussion**

**A. Mr. O’s Incarceration**

The division looks at the qualifying year of 2012 in determining eligibility for a 2013 PFD. An individual is entitled to “receive” one PFD if he or she meets all of the eligibility

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 6.

requirements.<sup>4</sup> One of those requirements relates to incarceration. An otherwise eligible applicant is not eligible if he or she is incarcerated at any time during the qualifying year as a result of a felony conviction.<sup>5</sup>

Mr. O does not dispute the general applicability of this provision, but argues that he is not seeking to *receive* a PFD. Instead, he wishes to have his application approved so the amount of the PFD can be assigned to a state government agency. “A person may assign the right to receive a permanent fund dividend to a federal, state, or municipal government agency or to a court.”<sup>6</sup> He notes that CSSD has issued a withholding order so that any money he received as a PFD would be received by CSSD, and not himself.<sup>7</sup>

The term “assign” means “to convey, to transfer rights or property.”<sup>8</sup> Mr. O cannot convey or transfer a right to receive a PFD to a state agency unless he himself first has the right to receive that PFD.<sup>9</sup> An assignee can claim “no greater right or interest than the assignor possessed.”<sup>10</sup> Because of his incarceration, Mr. O does not possess a right to receive a 2013 PFD. Because he may not receive a PFD, there is nothing for him to assign to either CSSD or the Alaska Commission on Postsecondary Education.

In a supplemental letter dated March 31, 2014, Mr. O refers to a recent news report that discussed new policies allowing inmates to apply for a PFD to be used to pay Child Support and other judgments or restitution. That type of policy change would have to be made by statute or possibly by regulation. No such statutory or regulatory change has been found.

***B. Mr. O’s Application Was Late***

The division’s second reason for denying Mr. O’s application is that his application was not timely. An application for a PFD must be made no later than March 31<sup>st</sup> of the dividend year.<sup>11</sup> Mr. O’s application was dated August 12, 2013.<sup>12</sup> This is more than four months after the due date.

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<sup>4</sup> AS 43.23.005(a).

<sup>5</sup> AS 43.23.005(d)(2)(A).

<sup>6</sup> AS 43.23.069(b).

<sup>7</sup> See August 28, 2013 Notice submitted by Mr. O.

<sup>8</sup> Black’s Law Dictionary (9<sup>th</sup> Ed 2009).

<sup>9</sup> See *Cascades Development of Minnesota v. National Specialty Insurance*, 675 F.3d 1095 (8<sup>th</sup> Cir. 2012) (Under Minnesota law, an assignment provides the assignee the same legal rights that the assignor had prior to the assignment).

<sup>10</sup> *Kirk v. Allstate Insurance Company*, 969 N.E.2d 980, 984 (Il. App(5<sup>th</sup>) 2012).

<sup>11</sup> AS 43.23.011(a).

<sup>12</sup> Exhibit 1, page 1.

At the informal appeal level, Mr. O explained that he had been sent to Colorado in March, where some Alaska prisoners are housed under a private contract. He stated

When filling out the PFD application, there was no allowance for being out of state due to incarceration and I did not want to lie on my application. I filed my PFD when I was returned to AK, even though it was late.<sup>[13]</sup>

Mr. O was correct to be concerned about providing incorrect information. In addition, standard forms don't always make it easy to provide the correct information when the situation requires a non-standard response. However, on the application Mr. O ultimately used, there is an absence code for "Other reasons, including business. Attach explanation."<sup>14</sup> Mr. O used that absence code, and then provided an explanation. Assuming the application form was the same, he could have done that in March as easily as he did the following August.

Even if the form were different, Alaska law provides a strict deadline for submitting a PFD application. It would have been Mr. O's responsibility to find a way to add comments to his application in such a way to indicate his absence and the reason for that absence.

It was Mr. O's responsibility to file his application by the deadline.<sup>15</sup> He concedes that he did not meet this deadline, and his reason for filing late does not fit within any of the allowable exceptions.

#### **IV. Conclusion**

The division denied Mr. O's application because he was incarcerated as a result of a felony during the qualifying year, and because his application was not timely. Either reason would independently support the division's action. Accordingly, the denial of Mr. O's PFD application is affirmed.

Dated this 8<sup>th</sup> day of May, 2014.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>13</sup> Exhibit 3, page 2.

<sup>14</sup> Exhibit 1, page 2.

<sup>15</sup> *In re V.J.H.*, OAH No. 10-0563-PFD (Commissioner of Revenue 2011), pages 1 – 2; *In re D.S. and L.T.*, OAH No. 08-0325-PFD (Commissioner of Revenue 2009), page 2. These decisions may be found online at <http://aws.state.ak.us/officeofadminhearings/Category.aspx?CatName=PFD>.

**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 6<sup>th</sup> day of June, 2014.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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