

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

In the Matter of)	
)	
N J & C J)	OAH No. 14-1187-PFD
(minor child))	Agency Nos. 2012-067-3806
_____)	2012-067-3885

DECISION AND ORDER

I. Introduction

N J applied for 2012 Permanent Fund Dividends (PFDs) for herself and for her minor child, C J.¹ The Permanent Fund Dividend Division (Division) denied her application because she was out of state when she applied, she failed to respond to the Division’s subsequent inquiries regarding the status of her residency, and it appeared to the Division that she had established residency in California.² Her son’s application was denied for the same reasons, and because he did not have an eligible sponsor.³

Ms. J appealed these denials. Prior to the hearing, the Division filed a Motion to Dismiss the appeal, based on Ms. J’s failure to file an informal appeal request by the appeal deadline.⁴ A formal hearing was held on August 19, 2014. Ms. J appeared in person and represented herself. The Division was represented by PFD Specialist Peter Scott.

Because Ms. J’s appeal was not timely, and she failed to make out a strong enough case for waiver of the appeal deadline, the Division’s Motion to Dismiss is granted.

II. Facts

Ms. J is a long-time resident of Alaska, and she was living in Anchorage with her son C during much of the 2011 qualifying year.⁵ She filed for divorce from C’s father in January 2011; the divorce was finalized in August 2011. In January 2012, she and C traveled to California to be with Ms. J’s daughter, who was attending school there. She applied for the 2012 PFD from California in March 2012, using No Name in Anchorage as her mailing address on the

¹ Exhibit 1.

² Exhibit 3.

³ *Id.*

⁴ Division’s Motion to Dismiss Appeal Request, Aug. 8, 2014.

⁵ Unless otherwise noted, the factual discussion in this decision is based on Ms. J’s testimony. Ms. J’s factual assertions are assumed to be true for purposes of deciding the Division’s Motion to Dismiss.

applications for herself and C.⁶ The home at No Name belonged to her parents, but it was not Ms. J's primary residence until late in 2012. She stated in her application that, as of that date, she was absent from Alaska due to "divorce business."⁷

The year of 2012 was a difficult one for Ms. J; her other homes in Alaska were foreclosed upon by lenders due to financial problems stemming from her divorce, and her vehicles were repossessed by lenders as well. During 2012, Ms. J filed for bankruptcy protection in California, attempting to preserve some of her assets in Alaska in the face of all of her financial difficulties. During the latter part of 2012, she lived in No Name 2, where she cared for her elderly parents and endured the trauma of a close family member overdosing on drugs in her presence.⁸ In late 2012, she returned to Anchorage and began living at No Name. During this same period, Ms. J's son experienced some serious medical problems that required surgery.

While all this was going on in Ms. J's life, on September 21, 2012 the Division sent letters to her at No Name, describing additional information that it needed in order to complete its processing of her PFD applications.⁹ This inquiry was prompted by the fact that Ms. J had filed her application from out of state.¹⁰ Ms. J never responded to these letters. Consequently, on November 30, 2012, the Division sent her two letters denying the applications.¹¹ These letters stated, in bold print, that the deadline for appealing the denials was December 30, 2012.¹² Ms. J was uncertain as to whether or not she ever received these letters through the mail.

In July 2013, Ms. J visited the Division's No Name 2 office and obtained copies of the November 30, 2012 denial letters.¹³ Ultimately, Ms. J filed her request for informal appeal more than five months later, and nearly a year after the deadline, on December 19, 2013.¹⁴

The Division denied Ms. J's informal appeal because it was not timely filed.¹⁵ This formal appeal followed.

⁶ This address remained Ms. J's address of record with the Division in 2012 and 2013.

⁷ Exhibit 1.

⁸ Fortunately the family member survived this incident.

⁹ Exhibit 2.

¹⁰ *Id.*

¹¹ Exhibit 3.

¹² *Id.* at pp. 2, 11.

¹³ Exhibit 7, p. 9.

¹⁴ Exhibit 4, page 1. In addition, Ms. J never filed responses to the Division's inquiries regarding her and C's residency during the 2011 qualifying year.

¹⁵ Exhibit 5.

III. Discussion

The Division moved to dismiss Ms. J's appeal because her request for an informal appeal was late. A request for an informal appeal must be filed within 30 days after notice that the PFD has been denied.¹⁶ When, as here, the PFD applicant misses the deadline and files a late appeal, if the Division denies the informal appeal because of the lateness, the PFD applicant can appeal that decision at the formal appeal level.¹⁷ Once the appeal makes its way to the second-level (formal appeal), the person hearing the appeal on behalf of the Commissioner of Revenue can waive the original deadline if "strict adherence to the deadline ... would work an injustice[.]"¹⁸

The length of the delay is an important factor that is considered when deciding whether strict adherence to the filing deadlines would work an injustice.¹⁹ Whether strict adherence would work an injustice depends on the circumstances of the particular appeal and how those circumstances compare to other waiver-of-appeal-deadline cases. One factor sometimes considered in assessing the injustice of adhering strictly to the deadline is whether the PFD applicant has a good chance of proving that he or she would be eligible for the PFD if allowed to go forward with an appeal.²⁰ That this factor has sometimes been considered, however, does not dictate that it must be considered by taking evidence and making fact findings based on the evidence.

Instead, it can be assumed (without being decided) that the PFD applicant might well succeed in proving that he or she would be eligible for the PFD in question if given the opportunity to do so at a hearing on eligibility. To focus the waiver inquiry on the reasons for the applicant's delay in filing the appeal, the following question can be asked: even if the applicant will be denied a PFD for which he or she might have been proven eligible in a timely-filed appeal, would strict enforcement of the appeal deadline work an injustice? To determine whether the appeal deadline will be waived in Ms. J's case, therefore, it is assumed that she could succeed in proving that she maintained her Alaska residency for purposes of her eligibility

¹⁶ 15 AAC 05.010(b).

¹⁷ 15 AAC 05.020(c).

¹⁸ 15 AAC 05.030(k).

¹⁹ See *In re S.O.*, OAH No. 09-0497-PFD (Commissioner of Revenue 2010), page 2, *In re J.G.*, OAH No. 09-0363-PFD (Commissioner of Revenue 2009), page 4.

²⁰ *Matter of B.S.*, OAH No. 05-0320-PFD at 3 (October 3, 2005) (finding no interests of justice requiring waiver of deadline, despite applicant's health issues, because there was not a reasonable chance of applicant prevailing at a hearing).

for the 2012 PFD, and that if the deadline is not waived she will not receive a PFD for which she would otherwise be eligible.

A key consideration in this context was summarized in another PFD appeal decision. “The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past.”²¹ Historically, because of this consideration, waivers of the appeal deadlines have been granted only in particularly compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

In re J.G., OAH No. 09-0363-PFD (2009): Military member was on active duty and in busy training period, and then moved several times before learning that a waiver of filing deadline might be available. 22 month delay in filing appeal **not excused**.

In re J.C., OAH No. 06-0742-PFD (2007): Military member was on active duty and in busy training period, and had recently undergone a divorce. 15 month delay in filing appeal **not excused**.

In re N., OAH No. 05-0595-PFD (2006): Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. Six-month delay in filing appeal **not excused**.

In re B., Caseload No. 040286 (2004): Division’s denial had errors that may have caused confusion about appeal deadline. Delay of “a week or two” might have been excusable. One year delay in appeal **not excused**.

In re G., Caseload No. 030739 (2004): Applicant missed deadline because he failed to give Division a change of address. One year delay in appeal **not excused**.

In re H., Caseload No. 040315 (2004): Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. Two-and-a-half month delay in properly initiating appeal was **excused**.

In re S., Caseload No. 040154 (2004): Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. Six-month delay in properly initiating appeal was **excused**.

These cases indicate that waiver of the deadline may be appropriate for a short period to allow a person experiencing life upheavals to file a late appeal. In addition, where the conduct of the Division caused confusion that contributed to delay in starting an appeal, a waiver may be appropriate; but even then the amount of extra time granted has not been unlimited. In general, more lengthy delays are not waived, absent extremely compelling circumstances. In one of the cases summarized above, involving difficult circumstances similar to Ms. J’s, a similarly lengthy delay was not allowed. In that case (*Matter of J.C.*) the PFD applicant received the appeal form just a day before going into a period of military training during which he had no access to postal

²¹ *Matter of J.C., OAH No. 06-0742-PFD (2007)* at 4.

services. He did not file his appeal until fifteen months after completing the training. During part of that period, he was working long (twelve hour) days and recovering from a divorce. The hearing officer noted that the appeal form is relatively simple to complete and found that the claimant's combination of circumstances was not sufficient to justify the fifteen-month delay.²² Because the delay was so long, no injustice was found in not allowing his appeal to go forward.²³

If enforcing the appeal deadline in *Matter of J.C.* did not work an injustice, then doing so in Ms. J's case does not either. Indeed, it arguably would work an injustice to other PFD applicants such as J.C., who have been held to the deadline, if the deadline were waived for Ms. J.

An applicant's busy or challenging life is not ordinarily a basis to waive the appeal deadline. This is natural, since many Alaskans work extremely hard but are able to find the time needed to fill out an appeal form.²⁴ In this case, Ms. J argues the appeal deadline should be waived because of the following circumstances: (a) she had just concluded a difficult divorce during which she felt abandoned, and she lost most of her assets despite arduous efforts through the courts; (b) her son had serious medical problems requiring surgery; (c) a family member overdosed on drugs in the presence of her and her son; and (d) she had to care for her aging parents. Although the problems cited by Ms. J would be challenging for many people, they must be viewed against previous PFD cases involving late appeals, and they must be weighed against the Division's legitimate interest in not having to look back and attempt to address stale eligibility issues many months or years after the fact.²⁵ When viewed in this light, Ms. J's challenges simply do not add up to the type of circumstances that are compelling enough to justify waiving the filing deadline for a nearly one-year delay.²⁶

IV. Conclusion

Because Ms. J's request for informal appeal was filed after the deadline in 15 AAC 05.010(b), and because she has not established a basis for a nearly one-year waiver of the

²² *Id.* at 5.

²³ *Id.*

²⁴ *Id.* at 4.

²⁵ *In re J.G.*, OAH No. 09-0363-PFD (2009) at 4.

²⁶ The Division also argued that even if Ms. J had difficulty receiving her mail due to her many changes of residence during her divorce and its aftermath, she obtained copies of the Division's denial letters when she visited the No Name 2 PFD office in July 2013. Yet she still waited more than five months after that to submit her appeal. This additional delay further supports the result reached in this Decision.

deadline under 15 AAC 05.030(k), her formal appeal of the denial of her and C's 2012 PFDs should be dismissed.

V. Order

IT IS HEREBY ORDERED that the Division's motion to dismiss Ms. J's appeal regarding the 2012 PFD is GRANTED.

DATED this 10th day of February, 2015.

By Signed _____
Andrew M Lebo
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 9th day of March, 2015.

By: Signed _____
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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