

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

In the Matter of)	
)	OAH No. 15-1040-PFD
E C)	Agency No. 2013-007-7945
_____)	

DECISION ON MOTION TO DISMISS

I. Introduction

E C applied for a 2013 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) denied the application. Mr. C filed a late request for an informal appeal. His informal appeal was denied on timeliness grounds, and Mr. C requested a formal hearing by correspondence.

The Division filed a Motion to Dismiss Mr. C's late appeal. Mr. C did not respond to that motion. The Division's motion is granted.

II. Facts

Mr. E applied for a 2013 PFD on January 7, 2013.¹ His application stated that he was absent from Alaska from July of 2010 through December 31, 2012, with the exception of about one week in December of 2012, receiving postsecondary education.² In explanation, he stated

My mom was active duty military until Sep 2011. I was her eligible dependent until I finished high school May 2011. She was stationed in South Dakota when I graduated so I enrolled in college in SD.^[3]

The Division asked for an Education Verification Form to assist it with processing Mr. C's application.⁴ Mr. C returned the Verification Form completed by the No Name University's registrar.⁵ The registrar listed the dates of Mr. C's enrollment, stated that he was a full time student who paid resident tuition.⁶ The form asks:

Does resident tuition mean that this student is a resident of the state or country where your institution is located?

The registrar answered "yes" to this question.⁷

¹ Exhibit 1, page 1.
² Exhibit 1, page 2.
³ Exhibit 1, page 2.
⁴ Exhibit 2.
⁵ Exhibit 3, page 1.
⁶ Exhibit 3, page 1.
⁷ Exhibit 3, page 1.

The Division denied Mr. C's application on June 14, 2013. The denial notice stated that he had until July 14, 2013 to request an informal appeal.⁸

Mr. C applied for a 2014 PFD. In processing that application, a PFD Technician stated I have recently had a conversation with your school's registrar, K U. She had confirmed that the resident tuition is extended to military dependents as well. After reviewing your application, everything looks good. I went ahead and reversed the denial and approved your application for payment. I do apologize for the inconvenience.

I noticed that you were denied for this very reason in 2013 with no attempt by the technician to make contact with the registrar and confirm your resident tuition status. You may very much still Appeal this decision. Normally, a timely Appeal is received within 30 days from when the denial letter has been issued. If you decide to Appeal your 2013 application, you will need to provide reasonable cause as to why the Appeal has been filed over a year later.^[9]

Mr. C requested an informal appeal, signing that request on January 25, 2015.¹⁰ The Division upheld its previous decision to deny his 2013 application.¹¹ Mr. C made a timely request for a formal hearing by written correspondence.¹²

This matter was referred to the Office of Administrative Hearings. A Notice of Hearing by Correspondence was mailed to the parties on August 12, 2015. This notice gave the parties until September 14, 2015 to file additional documents or explanation. The parties were allowed additional time to respond to any submission from the other party.

The Division filed a Motion to Dismiss dated August 24, 2015. OAH issued a notice the next day stating that Mr. C had until September 11, 2015, in which to oppose that motion. No opposition has been received.

III. Discussion

A. Applicable Law

A person must be an Alaska resident to be eligible for a PFD.¹³ In addition, the applicant must be present in Alaska during the entire qualifying year unless absent on an allowable absence.¹⁴ Being absent to attend college in another state is an allowable absence.¹⁵ However, a

⁸ Exhibit 4, page 1.

⁹ Exhibit 6, page 5. Active duty military personnel, their spouse, and their children are classified as residents for tuition purposes. Exhibit 9, page 4.

¹⁰ Exhibit 5, page 1.

¹¹ Exhibit 7.

¹² Exhibit 8.

¹³ AS 43.23.005(a)(2) & (3).

¹⁴ AS 43.23.005(a)(6).

person is not considered a resident for PFD purposes if, during the qualifying year through the date of application, the applicant

accepted admission under resident tuition provisions to a college or university in another state or country, unless

* * *

(C) the individual was granted admission under resident tuition provisions for any other reason that did not require the individual to be a resident of the state or country in which the college or university is located[.]¹⁶

B. *Untimely Appeal*

Based on the evidence in this case, Mr. C appears to have been eligible for a 2013 PFD. He was absent for an allowable reason, and he was allowed to accept resident tuition without claiming to be a resident of South Dakota. Had this information been presented by July 14, 2013, he would have had a strong case for reversal of the Division’s decision.

However, Mr. C’s appeal was approximately 18 months late. His appeal was due within 30 days after notice of the Division’s denial “unless the individual demonstrates a reasonable cause for the failure to file within this period.”¹⁷ In addition, at the formal hearing level, some deadlines may be waived if strict adherence to that deadline would work an injustice.¹⁸

Whether dismissal based on an untimely appeal will work an injustice depends on two factors: the individual’s apparent eligibility and the reasons for delay in filing the appeal. Where the undisputed evidence establishes that an individual is ineligible, there is no injustice in dismissing an untimely appeal based on a procedural technicality. By contrast, where the evidence is inconclusive, but indicates that an individual may be eligible, dismissal of an untimely appeal may work an injustice, depending on the circumstances. The relevant circumstances include, but are not limited to, the reasons for the delay and the length of the delay. Another factor to consider is whether the division’s conduct, or the applicant’s, is primarily responsible for the delay. The appeal deadline serves an important purpose, and waivers are not granted for insubstantial reasons.¹⁹

In this case, the evidence suggests that Mr. C was in fact eligible for a 2013 PFD. This weighs in favor of allowing a late appeal. By itself, however, this is not enough to waive the appeal deadline. Valid appeals only exist if an eligible applicant has been incorrectly denied his or her PFD. The purpose of the appeal process is to correct those mistakes. An appeal of a

¹⁵ AS 43.23.008(a)(1).

¹⁶ 15 AAC 23.143(d)(11).

¹⁷ 15 AAC 05.010(b)(5); *In re K B*, OAH No. 13-1426-PFD (Commissioner of Revenue 2014) available at <http://doa.alaska.gov/oah/Decisions/pfd.html>.

¹⁸ 15 AAC 05.030(k); *In re U C*, OAH No. 13-0777- PFD (Commissioner of Revenue 2013).

¹⁹ *In re K T*, OAH No. 12-126-PFD (Commissioner of Revenue 2012), pages 3–4 (internal footnotes omitted).

mistake must still be timely unless additional circumstances exist to support waiving the appeal deadline.

At the informal appeal level Mr. C wrote that he did not appeal the denial because he did not understand and assumed the denial was valid.²⁰ The notice sent to Mr. C says he was denied because he paid resident tuition and “had to be a resident of the state or country where the school is located to do so.”²¹ This notice also informed him that to reverse that decision, he would need to show that being a resident of South Dakota was “not required to pay resident tuition to attend school.”²² He had notice of what he needed to investigate if he wished to show the denial was not valid. Instead, he made the decision to assume it was valid and not appeal.

Mr. C also suggests that the Division erred in not contacting the school’s registrar.²³ The registrar submitted an Education Verification Form that said Mr. C was paying resident tuition and had to be a South Dakota resident to do so. The Division had no reason to question the accuracy of this form and no reason to contact the registrar to ask whether the form had been completed correctly.

Mr. C also suggests that the Division should have reviewed his prior PFD history.²⁴ Presumably, the Division would have found that Mr. C had received PFDs for multiple prior years. This information would not have rebutted the registrar’s statement that Mr. C claimed South Dakota residency in order to pay resident tuition.²⁵

The PFD technician did encourage an appeal. In doing so, he also told Mr. C that he would need to provide reasonable cause for filing the appeal late.²⁶ Mr. C has not established reasonable cause for the 18 month delay in filing his appeal. He has also not shown that strict adherence to the appeal deadline in this case would work an injustice.

//
//
//
//
//

²⁰ Exhibit 5, page 4.
²¹ Exhibit 4, page 1.
²² Exhibit 4, page 1.
²³ Exhibit 5, page 3.
²⁴ Exhibit 5, page 3.
²⁵ As noted above, this statement was wrong but the Division had no reason to suspect it was wrong.
²⁶ Exhibit 6, page 5.

IV. Conclusion

Mr. C’s appeal of the Division’s denial of his 2013 PFD application was 18 months late. He has not shown reasonable cause for that delay and has not shown that adherence to the deadline would be unjust. The Division’s motion is granted and Mr. C’s appeal is dismissed.

Dated this 28th day of September, 2015.

Signed

Jeffrey A. Friedman
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 26th day of October, 2015.

By: Signed

Signature
Andrew M. Lebo

Name
Administrative Law Judge/OAH

Title

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