

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

In the Matter of	)	
	)	
U D (MINOR)	)	OAH No. 16-1040-PFD
<hr style="width:40%; margin-left:0"/>	)	Agency No. 2015-017-6917

**DECISION AND ORDER**

**I. Introduction**

T D applied for a 2015 Permanent Fund Dividend (PFD) on behalf of his minor son, U D. The PFD Division denied the application after requesting and then not receiving additional information from Mr. D. Mr. D, through a family friend holding a power of attorney, then attempted to request an informal appeal of the denial, but the Division did not receive the request. Months later, Mr. D refiled the request for an informal appeal, which the Division denied as untimely. This appeal followed.

Based on the evidence presented under the unique facts of this case, it is more likely true than not true that the request for informal appeal *was* timely submitted. Because the Division indicated at hearing that it did not have sufficient evidence to determine whether U was otherwise eligible for the 2015 PFD – specifically, to determine whether U’s application was submitted by an “eligible sponsor” – this matter is remanded to the Division for redetermination of U’s eligibility for the 2015 PFD.

**II. Facts**

Five-year-old U D lives in No Name, Alaska.<sup>1</sup> In January 2015, U’s father, T D, submitted an application for a 2015 PFD on U’s behalf.<sup>2</sup>

In May 2015, the PFD Division sent a letter to Mr. D stating that, because U had not filed for a 2014 PFD, the Division could not finish processing his 2015 PFD application until a “Child Prior Year Non-Filer Form” was submitted.<sup>3</sup> The letter indicated that the form needed to be submitted within thirty days.<sup>4</sup>

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<sup>1</sup> Ex. 1, p. 1.  
<sup>2</sup> Ex. 1.  
<sup>3</sup> Ex. 2, p. 1.  
<sup>4</sup> Ex. 2, p. 1.

Although the Division sent its May 2015 letter to the same P.O. Box that Mr. D listed as a mailing address on U's January 2015 PFD application, Mr. D denies receiving the May 2015 letter.<sup>5</sup> He therefore did not send the supplemental material requested by the Division.

On November 27, 2015, the Division mailed Mr. D a notice of denial of U's 2015 PFD application.<sup>6</sup> The Notice of Denial explained that no response had been received to its request for a Child Prior Year Non-Filer Form for U,<sup>7</sup> and indicated that "sufficient documentation to meet all PFD eligibility requirements has not been provided."<sup>8</sup> The Notice informed Mr. D that he had 30 days to file an informal appeal.<sup>9</sup> Enclosed with the denial notice was a form to use for requesting an informal appeal.<sup>10</sup> The top right corner of the form contains a bolded warning: "This Appeal Request Will Be Denied If Received or Postmarked after December 27, 2015."<sup>11</sup>

A family friend, U O, timely prepared a Request for Informal Appeal. Mr. O has assisted Mr. D and U in various capacities, including assisting Mr. D and U in returning to Alaska in 2013, advocating for Mr. D with his legislator, and at one point obtaining a foster care license in order to serve as U's foster parent.

In the request for informal appeal, Mr. D denied having received the Division's May 1<sup>st</sup> request for more information, and stated that the Division's November 27, 2015 letter was the first notice he had that the Division had needed more information regarding U's application.<sup>12</sup> Mr. D enclosed with his request a Child Prior Year Non-Filer Form for U.<sup>13</sup> On the Prior Year Non-Filer Form, Mr. D explained he had not applied for a 2014 PFD for U because he was unsure whether U would be eligible for that year's Dividend.<sup>14</sup> Mr. D reported that U had lived out of state with his paternal grandmother beginning in May 2011,

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<sup>5</sup> Ex. 1, p. 1; Ex. 3, p. 2.

<sup>6</sup> Ex. 2, pp. 2-6.

<sup>7</sup> Ex. 2, p. 2.

<sup>8</sup> Ex. 2, p. 2.

<sup>9</sup> Ex. 2, p. 2.

<sup>10</sup> Ex. 3.

<sup>11</sup> Ex. 3, p. 1 (emphasis in original).

<sup>12</sup> Ex. 3, p. 2.

<sup>13</sup> Ex. 3, pp. 2, 5-6.

<sup>14</sup> Ex. 3, p. 5.

returning to Alaska in March 2013 to live with his father.<sup>15</sup> According to the request for informal appeal, U has lived continuously in Alaska since that time.<sup>16</sup>

Both the request for informal appeal and the prior year non-filer form were dated December 11, 2015.<sup>17</sup> According to credible testimony from Mr. O, Mr. O prepared the appeal form for Mr. D's signature. Mr. O also printed out the attached Alaska Airlines confirmation email from 2013 – the email indicates it was printed from Mr. O's email account on December 1, 2015. As soon as Mr. D signed the form, Mr. O made a photocopy of the entire package, then mailed it in a manila envelope from his office.

The PFD Division never received the December 2015 Request for Informal Appeal. However, Mr. D and Mr. O did not know this.

In the meantime, Mr. D submitted a 2016 PFD application for U. In April 2016, the Division notified Mr. D that it needed more information to process that application. This was when Mr. D and Mr. O learned that the Division had not received the December 2015 request for informal appeal. Mr. O then mailed another copy of the December 2015 request for informal appeal and supporting documents, which the PFD Division received on May 18, 2016.<sup>18</sup> On July 21, 2016, the Division denied the request for an informal appeal as untimely.<sup>19</sup>

Mr. O timely filed a request for a formal hearing on U's behalf.<sup>20</sup> Mr. O's request for formal hearing claims that he mailed the Request for Informal Appeal on December 13, 2015.<sup>21</sup>

At Mr. O's request, a telephonic hearing was held on October 20, 2016. U was represented by Mr. O. Mr. D was present but did not testify. The Division was represented by Bethany Thorsteinson. The Division's Exhibits 1-6 were admitted without objection. The record closed at the end of the hearing.

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<sup>15</sup> Ex. 3, pp. 2, 3.

<sup>16</sup> Ex. 3, p. 2.

<sup>17</sup> Ex. 3, pp. 1, 5.

<sup>18</sup> Ex. 3, p. 1.

<sup>19</sup> Ex. 4. The Division noted that U would be able to apply for his 2015 PFD between his 18th and 20th birthdays. Ex. 4, p. 2.

<sup>20</sup> Ex. 6.

<sup>21</sup> Ex. 6, p. 2.

### **III. Discussion**

The Division filed a motion to dismiss based on the untimeliness of U's informal appeal. But Mr. O established that it is more likely true than not true that he timely mailed the request for informal appeal.

Normally a party cannot overcome the untimeliness of their appeal by claiming that the appeal must have gotten lost in the mail. Parties vexed by missed deadlines frequently make such assertions, and taking such self-serving claims as sufficient to override statutory or regulatory deadlines would defeat the purpose behind those deadlines.

This case is unusual, however, because Mr. D's otherwise self-serving assertions of having timely submitted the informal appeal are substantiated by the credible testimony of Mr. O. It is significant that Mr. O has no apparent personal stake in the outcome of this appeal, other than a genuine desire to assist Mr. D and his son navigate various processes or problems – a set of circumstances that, under the unique facts of this case, make his testimony more reliable.

Mr. O's testimony about the circumstances under which he prepared the appeal was credible. He established that the date on the Alaska Airlines itinerary email shows that he printed that email on December 1, 2015, and argued persuasively that he would have had no reason to do so other than that he was preparing the request for informal appeal. While arguments suggesting that a document must have gotten lost in the mail are generally not persuasive, the unique constellation of evidence here suggests it is indeed more likely true than not true that the request for informal appeal was timely mailed.

The Division indicated during the hearing that, had it timely received the request for informal appeal, it would have endeavored to work with Mr. D to determine whether U was eligible for a 2015 PFD. The Division indicated, in particular, that further factual investigation is needed to determine whether Mr. D was an "eligible sponsor" for residency purposes for the 2015 application. And the Division indicated that, in the event that I were to conclude that the request for informal appeal was timely, the case should be remanded to the Division for this purpose. I am therefore remanding this matter to the Division to determine whether Mr. D was a resident for purposes of serving as an eligible sponsor for U's application.

**IV. Conclusion and Order**

This matter is remanded to the Division for determination of U’s eligibility for a 2015 dividend. Specifically, the Division shall determine whether U had an eligible sponsor for purposes of the 2015 dividend.

Dated: November 18, 2016

Signed  
Cheryl Mandala  
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 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 13th day of December, 2016.

By: Signed  
Signature  
Cheryl Mandala  
Name  
Administrative Law Judge - OAH  
Title

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