

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

In the Matter of	)	
	)	
ESTATE OF X O	)	OAH No. 18-0149-PFD
	)	Agency Nos. 2017-030-4244 &
_____	)	2017-067-0507

**DECISION AND ORDER**

**I. Introduction**

L O filed both a 2016 Permanent Fund Dividend (PFD) “D” application and a 2017 PFD “E” application on behalf of his late father, X O. Both applications were denied at the eligibility level and the informal appeal level. L O, who serves as the personal representative of the Estate of X O (“Estate”), appealed the decision of the Permanent Dividend Division (Division) on both applications, resulting in this consolidated appeal.

A formal telephonic hearing on the consolidated appeal was held on March 27, 2018. L O represented the Estate. The Division was represented by PFD Specialist Peter Scott.

For the reasons discussed below, the Division’s decision denying the 2016 PFD “D” application is upheld and its decision denying the 2017 PFD “E” application is reversed.

**II. Facts**

X O was a long-time Alaska resident and owner of the Mine A near City A, Alaska.<sup>1</sup> He had received the PFD since the program’s inception in 1982 through the 2015 dividend year.<sup>2</sup> In 2015, X O, who was born in 1936, began experiencing difficulty in handling his daily activities due to dementia.<sup>3</sup> L O, X O’s son, discovered that his father was struggling with managing his business affairs after X O neglected to file some documents related to the family business.<sup>4</sup> L O subsequently filed a Petition for the Appointment of a Conservator and an Emergency Petition for the Appointment of a Temporary Conservator for his father on September 6, 2016.<sup>5</sup>

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<sup>1</sup> Division’s Position Statement, p. 1.  
<sup>2</sup> Division’s Position Statement, p. 1; Ex. 12.  
<sup>3</sup> See Ex. 1, p. 1; Ex. 3, p. 2; Ex. 6, p. 2.  
<sup>4</sup> Testimony of L O.  
<sup>5</sup> Ex. 13, pp. 1-2.

A Conservatorship Hearing was initially scheduled for September of 2016 in the City B Superior Court.<sup>6</sup> However, the hearing was rescheduled for December 13, 2016.<sup>7</sup> Regrettably, Mr. O passed away on November 20, 2016, several days after he suffered a stroke and was medevacked to a hospital in Seattle.<sup>8</sup> The Conservatorship case was then closed.<sup>9</sup> On December 5, 2016, L O was appointed the personal representative for the Estate by the Superior Court in City B, Alaska.<sup>10</sup>

**A. X O's 2016 PFD "D" Application**

After his father's death, L O learned that X O had not filed for his 2016 PFD.<sup>11</sup> L O then filed a 2016 PFD "D" application – which is used for disabled adults – on his father's behalf.<sup>12</sup> The 2016 PFD "D" application was required to be filed *after* March 31, 2016 and postmarked or received by the PFD Division by March 31, 2017.<sup>13</sup> The Division received the 2016 PFD "D" application on January 30, 2017.<sup>14</sup>

The Division, on March 10, 2017, sent a letter addressed to the Estate of X H. O denying the 2016 PFD "D" application.<sup>15</sup> L O requested an Informal Appeal on April 7, 2017.<sup>16</sup>

The 2016 informal appeal decision was mailed to L O on August 24, 2017. It upheld the Division's denial of X O's 2016 PFD "D" application.<sup>17</sup> The Division received L O's Request for a Formal Hearing regarding the 2016 PFD "D" application on January 25, 2018.<sup>18</sup> Initially, the Division filed a Motion to Dismiss the formal appeal of the 2016 PFD "D" application because the filing was untimely.<sup>19</sup> However, approximately two weeks after

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

<sup>7</sup> Testimony of L O; Ex. 3, p. 3.

<sup>8</sup> Ex. 7, pp. 2-3.

<sup>9</sup> Division's Position Statement, pp. 1-2; Ex. 13.

<sup>10</sup> Ex. 4, p. 8.

<sup>11</sup> Testimony of L O.

<sup>12</sup> *See* Ex. 1.

<sup>13</sup> Ex. 1, p. 1.

<sup>14</sup> *See* Ex. 1.

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

<sup>16</sup> Ex. 3.

<sup>17</sup> Ex. 5.

<sup>18</sup> Ex. 6, p. 1. In his Request for a Formal Appeal, L O stated that he had originally submitted this appeal on September 6, 2017, but noted that it "appears to have been lost."

<sup>19</sup> *See* Division's Position Statement, p. 3. The Division noted that it had sent its Informal Appeal Decision to L O at his Road A address in City B on August 24, 2017, which was one of L O's residences. *See* Position Statement, p.3; Testimony of L O. L O was advised in the decision that he would need to file an appeal by September 23, 2017. *See* Ex. 6, p. 1.

the hearing, the Division notified the Office of Administrative Hearings and L O by e-mail that it was withdrawing its Motion to Dismiss.<sup>20</sup> Consequently, this decision addresses the merits of whether the Division should have denied X O’s 2016 PFD “D” application; it also addresses the Division’s denial of X O’s 2017 PFD “E” application.

**B. X O’s 2017 PFD “E” Application**

L O filed a 2017 PFD “E” application for his late father on June 21, 2017.<sup>21</sup> The “E” application is used when a filing is on behalf of an adult estate where the adult has passed away during the period from June 29, 2016 through December 31, 2016 *and* “received a PFD dividend in the year immediately preceding the qualifying year.”<sup>22</sup> It must be filed by a personal representative of the estate or a successor claiming personal property under AS 13.16.680.<sup>23</sup> L O satisfied both criteria.<sup>24</sup>

The Division sent the Estate a notice of denial for the 2017 PFD “E” application on January 26, 2018.<sup>25</sup> L O filed a Request for an Informal Appeal on January 26, 2018.<sup>26</sup> The Informal Appeal decision for the 2017 PFD “E” application upheld the Division’s initial decision that the Estate is not eligible to receive a 2017 PFD.<sup>27</sup> L O filed a Request for a Formal Hearing on January 29, 2018.<sup>28</sup>

**III. Discussion**

The Division consolidated the appeals for the 2016 PFD “D” application and the 2017 “E” Application for the formal hearing.<sup>29</sup> However, the legal issues in each appeal are different, so that each appeal is discussed separately below. As the Division has noted, each of these appeals represents a case of first impression.

**A. X O’s 2016 PFD “D” Application**

The facts concerning X O’s 2016 PFD “D” Application are not in dispute. X O began suffering from dementia in 2015.<sup>30</sup> L O filed a petition to have a conservator

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<sup>20</sup> See e-mail from Peter Scott, dated April 9, 2018.

<sup>21</sup> See Ex. 7.

<sup>22</sup> AS 43.23.005(H).

<sup>23</sup> Ex. 7, p. 1.

<sup>24</sup> Ex. 7, p. 1.

<sup>25</sup> Ex. 8, pp. 1-2.

<sup>26</sup> Ex. 9.

<sup>27</sup> Ex. 8, p. 1.

<sup>28</sup> Ex. 11, p. 1.

<sup>29</sup> Division’s Position Statement, p. 1.

<sup>30</sup> Ex. 3, p. 2.

appointed for his father, X O, in September of 2016.<sup>31</sup> A hearing on that petition was scheduled for December 13, 2016, but X O died on November 20, 2016.<sup>32</sup> L O was appointed the personal representative for his father’s estate on December 5, 2016.<sup>33</sup> On January 30, 2017, L O filed a 2016 PFD “D” application for X O, which the Division denied.<sup>34</sup>

Under AS 43.23.011, an application for a PFD must be filed during the period that begins on January 1 and ends on March 31 of the dividend year, which is the year the dividend is paid.<sup>35</sup> In this instance, the dividend year was 2016, so the *application period* for the 2016 PFD normally would have ended on March 31, 2016. However, 15 AAC 21.133 creates exceptions to this general rule by permitting an application to be filed “within one year after the end of the application period pertaining to the dividend for which the individual is applying” under certain circumstances. One such exception is an application for a disabled individual. Under 15 AAC 23.133(d):

If an individual is disabled, as defined in AS 43.34.095, during the application period of the prior year [January 1 – March 31, 2016] and, as a result of the disability did not timely file an application, that individual *or an authorized representative* may submit an application for the prior year [2016] dividend. A certification from a licensed health care provider must be provided with the disabled individual’s application. The certification from a licensed health care provider must include

- (1) confirmation that the individual was disabled on March 31 of the dividend year [2016] for which the individual is applying; and
- (2) a statement explaining why the disability prevented the applicant from timely filing an application during the application period of the dividend year for which the individual is applying.<sup>36</sup>

In other words, if an adult qualifies for a PFD “D” application, the adult – or the person filing the PFD “D” application on the adult’s behalf – receives an additional year to file for the prior year’s dividend.

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<sup>31</sup> Division’s Position Statement, p. 1; Ex. 13, p. 1.  
<sup>32</sup> Ex. 13, p. 1; Ex. 3, p. 1; Ex. 1, p. 4.  
<sup>33</sup> Ex. 4, p. 8.  
<sup>34</sup> Ex. 1; Ex. 2, p. 1.  
<sup>35</sup> AS 43.23.011(a).  
<sup>36</sup> 15 AAC 23.133(d).

The Division does not dispute that X O was “disabled” within the meaning of the statute during the 2016 PFD application period.<sup>37</sup> Moreover, there are no issues concerning the sufficiency of the health care provider certification, the timeliness of the PFD “D” application, or L O’s status as an authorized representative.<sup>38</sup> Instead, the Division argues that X O had to be living at the time L O, his authorized representative, filed the 2016 PFD “D” application.<sup>39</sup>

In support of its argument, the Division notes that the term “individual” is defined in AS 43.23.095 to mean “a natural person.” The Division then points to Black’s Law Dictionary, which defines the term “person” as a “human being.”<sup>40</sup> Using these definitions as the basis for its argument, the Division has concluded that the disabled individual who is the subject of a PFD “D” application must be alive *at the time the Alaska PFD “D” application is filed*. The Division then denied X O’s 2016 PFD “D” application because he passed away on November 20, 2016 and his authorized representative did not file the 2016 application until January 30, 2017.

Additional support for the Division’s position can be found in 15 AAC 23.993(a)(2). Under 15 AAC 23.993(a)(2), the term “authorized representative” is defined as:

[A]n adult who has a sufficiently significant relationship with . . . another adult that the department is satisfied that the person is applying for the dividend payment for the *benefit of . . . the adult . . .*<sup>41</sup>

Since X O had passed away before the 2016 PFD “D” application was filed, the 2016 dividend payment would not be for X O’s benefit, but rather for the *benefit of his Estate*.

As the Division noted in its Position Statement, L O – X O’s only son – could have applied for the 2016 PFD at any time during 2016 while his father was still living.<sup>42</sup> The definition of an “authorized representative” is very broad; there is no requirement that L O

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<sup>37</sup> AS 43.23.095 defines “disabled” to mean being “physically or mentally unable to complete and sign an application due to a serious . . . health impairment , or developmental disability that is attributable to intellectual disability.”

<sup>38</sup> L O had until March 31, 2017 to file the PFD “D” application on X O’s behalf; he filed the application on January 30, 2017. *See* Ex. 1, p. 1.

<sup>39</sup> Division’s Position Statement, p. 4 (emphasis added).

<sup>40</sup> Ex. 15; *see also* Black’s Law Dictionary, 7<sup>th</sup> ed. (1999)(defining a “natural person” as a “human being, as distinguished from an artificial person created by law,” such as a corporation).

<sup>41</sup> 15 AAC 23.993(a)(3).

<sup>42</sup> Division’s Position Statement, p. 2. The Division noted that the application could have been filed with a power of attorney. However, the definition of “authorized representative” does not have such a requirement.

be a court-appointed guardian or conservator for his father before L O could file the 2016 PFD “D” application, given their significant relationship.<sup>43</sup> L O admitted at the hearing that he had not filed the PFD “D” application earlier because it “was not on his mind” until the attorney for the Estate pointed out that he had not filed for the PFD.<sup>44</sup>

Accordingly, the Division’s denial of X O’s 2016 PFD application interpretation is consistent with the applicable regulations. The Division’s decision on the 2016 PFD is, therefore, affirmed.

**B. X O’s 2017 PFD “E” Application**

Under 43.23.005(h), the estate of a deceased Alaska resident may apply for and receive payment of a PFD:

If an individual who received a dividend for the *year immediately before the qualifying year* and who would otherwise have been eligible for a dividend dies during the qualifying year after having been a state resident for at least 180 days immediately before the date of death, notwithstanding (a)(1)-(3) and (a)(6) of this section, a personal representative of the estate or a successor claiming personal property under AS 13.16.680 may apply for and receive the dividend. Notwithstanding AS 43.23.011, an application for a dividend may be filed by the personal representative or the successor under this subsection at any time before the end of the application period of the next dividend year.<sup>45</sup>

It is undisputed that X O was an Alaska resident for at least 180 days before his death.<sup>46</sup> He also was “otherwise eligible” to receive a PFD, having received one from 1982 to 2015, and his personal representative filed a timely application.<sup>47</sup> Thus, the only question remaining is whether X O received a dividend in the “year immediately before the qualifying year.”

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<sup>43</sup> During his testimony, L O indicated that he was under the impression that he could not file the PFD “D” application since he was not his father’s power-of-attorney and had not yet been appointed as his guardian. However, as the term “authorized representative” is defined in 15 AAC 23.993(a)(2), such formalities are not required.

<sup>44</sup> Testimony of L O. L O testified that he had his hands full dealing with his father’s debts and cash that was missing from his father’s bank account.

<sup>45</sup> AS 43.23.005(h).

<sup>46</sup> Ex. 7, p. 1.

<sup>47</sup> Ex. 12; Ex. 7, p. 1; Division’s Position Statement, p. 5.

The Division asserts that the reference to receiving a dividend in the “*year immediately before the qualifying year*” is ambiguous, since it could mean either calendar year 2015 or calendar year 2016.<sup>48</sup> If the reference to “the year immediately before the qualifying year” can be read as meaning calendar year 2015, the Division concedes that the Estate is eligible for the 2017 dividend since X O received a dividend for 2015.<sup>49</sup> The Division, however, argues in favor of the second interpretation, claiming that the Legislature intended to refer to two consecutive dividend years – here, the 2017 dividend year and the preceding 2016 dividend year – when using this phrase.<sup>50</sup> According to the Division, it is a “reasonable interpretation” that the Legislature did not intend to skip a dividend year – here, 2016 – when applying the language of this paragraph.<sup>51</sup> Under the Division’s interpretation, the Estate is not eligible for the 2017 dividend since X O did not receive a 2016 dividend.<sup>52</sup>

However, the phrase “an individual who received a dividend for the *year immediately before the qualifying year*,” is not ambiguous. The term “year” is defined in the statute as the “calendar year.”<sup>53</sup> AS 43.23.095(6) defines the “qualifying year” as the “year immediately preceding January 1 of the current dividend year.”<sup>54</sup> In other words, the qualifying year for the 2017 dividend – *i.e.*, the year immediately preceding January 1 of the dividend year – was 2016. Consequently, the “year immediately before the qualifying year” is 2015.

As the Alaska Supreme Court has noted, where “a statute’s meaning appears clear and unambiguous . . . the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent.”<sup>55</sup> The Division admitted that there was no legislative history to explain the legislature’s intent with regard to this phrase.<sup>56</sup> For this reason, the Division has not met its burden of demonstrating contrary legislative intent.

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<sup>48</sup> Division’s Position Statement, p. 5.

<sup>49</sup> Division’s Position Statement, p. 6.

<sup>50</sup> Division’s Position Statement, p. 6.

<sup>51</sup> Division’s Position Statement, p. 6.

<sup>52</sup> Division’s Position Statement, p. 6.

<sup>53</sup> AS 43.23.095(8).

<sup>54</sup> AS 43.095(6).

<sup>55</sup> *University of Alaska v. Geistauts*, 666 P.2d 424, 428 n. 5 (Alaska 1983).

<sup>56</sup> Testimony of Peter Scott.

**IV. Conclusion**

Because X O passed away before his authorized representative filed a 2016 PFD “D” application, the Division’s decision to deny the 2016 PFD is upheld. However, because X O received a dividend in 2015 – the *year immediately before the qualifying year* (2016) for the 2017 dividend – the Estate is entitled to receive the 2017 dividend. Consequently, the Division’s denial of the 2017 dividend is reversed.

Dated: April 24, 2018

*Signed* \_\_\_\_\_  
Kathleen A. Frederick  
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 7<sup>th</sup> day of June, 2018.

By: *Signed* \_\_\_\_\_  
Signature  
Sheldon Fisher  
Name  
Commissioner, Dept. of Revenue  
Title

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