

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

In the Matter of)
)
K AND A W, F W (MINOR)) OAH No. 18-0663-PFD
) Agency No. 2017-067-1657/58/59

DECISION AND ORDER

K W, A W and F W appeal the denial of their 2017 Permanent Fund Dividends (PFD). Ms. W, who handled the dividend applications for the family, admits she did not file for the PFD prior to March 31, 2017. She discovered she had not filed after the PFDs were distributed by the Permanent Fund Dividend Division (Division), and she and her family did not receive them. She filed for her PFD on October 23, 2017, on behalf of herself and her children. The Division denied the applications as untimely. The informal appeal, filed December 7, 2017, was also denied¹ .

Because the applications for K W, A W, and F W were not timely filed, and there is no applicable exception for which the family is eligible, the Division's denials of the PFD are affirmed.

II. Facts

K W is the single mother of A and F W.² Prior to his turning 18, Ms. W was the sole provider for A W.³ A W turned 18 on March 7, 2017.⁴ Ms. W did not apply for his PFD before that time.⁵ A W did not apply for his PFD after turning 18, before March 31, 2017.⁶

¹ Exhibit 3.
² Ms. W testimony.
³ Ms. W testimony.
⁴ Ms. W testimony.
⁵ Ms. W testimony.
⁶ Ms. W testimony.

F W was born January 19, 2005.⁷ He is a medically fragile child with cerebral palsy.⁸ K W had sole custody of F during the application period for the 2017 PFD.⁹ Ms. W was F's sponsor during this period, but did not file for his 2017 PFD before March 31, 2017.¹⁰

Ms. W was, and remains, the full-time caretaker for F, who is severely disabled.¹¹ Ms. W's days are filled with caretaking and medical appointments for F.¹²

Ms. W mistakenly believed she had applied for the 2017 PFDs.¹³ After failing to receive a PFD for herself or the children, she contacted the Division and discovered she had not begun or filed for the PFD as believed.¹⁴

She then filed on behalf of her and her children, which was ultimately denied because it did not comport with the statutory time frames set forth in AS 43.23.011 which requires an application be filed between January 1 and March 31 of the dividend year.

Ms. W then requested for the Formal Hearing on May 8, 2018, which was heard on August 9, 2018.¹⁵

III. Discussion

The legislature has adopted a strict deadline for PFD applications. The period for applying ends on March 31 of the dividend year.¹⁶ An application must be received by the Division or postmarked during the application period to be considered timely.¹⁷ The applicant is responsible for ensuring that the application is timely delivered to the Division.¹⁸

⁷ Exhibit 2.

⁸ Exhibit 3; Ms. W testimony.

⁹ Ms. W testimony.

¹⁰ Ms. W testimony.

¹¹ Ms. W testimony; Exhibit 1.

¹² Ms. W testimony.

¹³ Ms. W testimony; Ex 6 & &; Mr. T testimony.

¹⁴ Ms. W testimony; Mr. T's testimony.

¹⁵ Exhibit 5.

¹⁶ AS 43.23.011.

¹⁷ 15 AAC 23.103(a). There are exceptions for military personnel eligible for hostile fire or imminent danger pay. There was no evidence indicating that either Ws might qualify for one of those exceptions.

¹⁸ 15 AAC 23.103(g).

Ms. W admits she did not file for PFDs until October 23, 2017. Therefore, the only way for her to obtain a PFD for her and her children would be to find an applicable exception.

A. The Division requests an outright dismissal because Ms. W did not timely file her informal appeal.

The Division requested the dismissal of the appeal outright because Ms. W, on behalf of herself and her children, filed the request for an informal appeal on December 7, 2017¹⁹. Requests must be filed within 30 days after the date of the notice of assessment unless the individual demonstrates a reasonable cause for the failure to file within this period.²⁰

However, at the formal hearing level, the deadline may be waived if strict adherence to the deadline would work an injustice.²¹ Historically the appeal deadlines have only been set aside in particularly compelling circumstances.²² Ms. W spent her days focused on addressing the needs of her disabled son. This differs from the ordinary circumstances of a person who misses a deadline. Given the compelling circumstances, the Division's request for a dismissal is denied.

B. Ms. W must provide evidence of an applicable exception to receive a PFD on behalf of herself and/or her children

In considering this formal appeal, despite her intentions, Ms. W did not file the PFD applications before March 31, 2017.²³ Since no application for the 2017 PFD was made prior to the deadline, the denial is correct, unless Ms. W qualifies for an exception to the filing deadline.

i. F W's disability does not provide a basis for an exception for Ms. W missing the PFD filing deadline.

An exception to the PFD filing deadlines is allowed for disabled adults: "An application for a dividend may be filed on behalf of a disabled adult only by the disabled adult's spouse,

¹⁹ Exhibit 3.

²⁰ 15 AAC 05.010(b)(5).

²¹ 15 AAC 05.030(k).

²² *In re V.D.*, OAH No. 14-0943-PFD at 3 (Commissioner of Revenue 2014).

²³ Ms. W testimony; AS 43. 23. 011.

parent, legal guardian or other authorized representative.”²⁴ Nothing in the regulation extends the exception to minors. The exception for adults requires the adult to provide evidence of any disabilities.²⁵

It does not apply to minors because no minor, regardless of disability status, can apply for their own PFD.²⁶ Since F is a minor, he is not subject to an exception under 15 AAC 23.123.

Ms. W argues she should be granted an exception because F’s disability impacted her ability to apply for the PFD timely. The exception for PFD filing deadlines applies to disabled adults.²⁷ Ms. W does not have a disability, nor does she assert she has one.²⁸

There is no disputing caring full time for a youth with a disability is taxing and can result in things slipping through the cracks. But legally, the impact of F’s disability is not transitive to her. As such, neither she nor F can receive an application exception based on F’s disability

- ii. Because F is a minor, an exception exists allowing F to apply for his 2017 PFD once he reaches 18

Minors are afforded protection from their sponsor’s failure to time file for their PFD.²⁹ Since F is a minor and not able to file on his behalf at this time, he can apply for his 2017 PFD, or an adult on behalf of him as a disabled adult, when he turns 18.³⁰ Of note, the Division does not issue prior year dividends automatically; F must reapply once he turns 18 but before he turns 20.³¹

- iii. No age exception exists allowing A to file a PFD Application for Prior Year Dividend as he turned 18 during the eligibility time for applying for the 2017 PFD

²⁴ AS 43.23.055(7); 15 AAC 23.123.

²⁵ 15 AAC 23.123 (a) and (b).

²⁶ 15 AAC 23.113.

²⁷ 16 AAC 23.123

²⁸ Ms. W testimony; 15 AAC 23.123.

²⁹ 15 AAC 23.113.

³⁰ 15 AAC 23.133(b); 15 AAC 23.123. Ms. W stated she does not believe, given F’s diagnosis that he will live until he is 18. It is unfortunate the law does not take those matters into account. Everyone is hopeful that F will reach his 18 under the kind care of his mother.

³¹ 15 AAC 23.133(c).

An individual who is otherwise eligible for a PFD from the prior year but whose sponsor failed to file on their behalf when that individual was still a minor, can apply for the previous PFD.³² This is inapplicable to A because he turned 18 March 7, 2017. He could have applied himself.³³ Even though he was a minor for a portion of the application process, once he turned 18, the obligation to apply on his own behalf began.³⁴ Since he did not file for his PFD prior to March 31, 2017, he is not eligible for the 2017 Dividend.

IV. Conclusion

Because the applications were filed after the deadline, K W and A W do not qualify for a 2017 dividend. The only exception is to find an applicable exception, In this case, there are no exceptions that will allow any of the Ws to receive their 2017 PFD at this time. Although the Division did not receive a timely application for F W, given his minority status, he may reapply for the missed 2017 dividend once he turns 18. Given his disability, his personal representative can apply on his behalf if needed. This decision does not affect the ability of F to qualify for dividends in 2018 or future years.

Given the stress of daily caretaking for a high needs youth, it is not surprising this got overlooked. Ms. W is a strong advocate for her family and should be commended for her efforts. Unfortunately, there is no legal mechanism to award any of these individuals their 2017 PFDs.

Dated: August 24, 2018

By: Signed
Signature
Hanna Sebold
Name
Administrative Law Judge
Title

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³² 15 AAC 23.133.
³³ Exhibits 1, 5, and 2.
³⁴ 15 AAC 23.133.

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 8th day of September, 2018.

By: Signed

Name: Hanna Sebold

Title: Administrative Law Judge

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