

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

In the Matter of)
)
U X) OAH No. 15-1111-PFD
) Agency No. 2015-039-7648
_____)

DECISION & ORDER

I. Introduction

This case is U X's appeal of the Permanent Fund Dividend Division's (Division) denial of her 2015 PFD applications for her children, C W, N J and K J. The Division denied Ms. X's PFD applications for these children because they were placed in state custody prior to the 2015 PFD application deadline.

U X timely applied for 2015 permanent fund dividends, for C W, N J and K J. The Division determined that Ms. X was not eligible to apply for these children, and it denied the applications initially and at the informal appeal level. Ms. X requested a formal hearing by correspondence. The hearing record closed on October 9, 2015. Pete F. Scott represented the Division and filed a position paper.

Administrative Law Judge Mark T. Handley was appointed to review and decide Ms. X's appeal. Having reviewed the evidence in the record, the Administrative Law Judge concludes that because these children were in state custody on the 2015 PFD application deadline, only the Alaska Department of Health and Social Service was eligible to apply on these children's behalf. Ms. X's applications for these children were therefore correctly denied.

II. Facts

Ms. X is the mother of C W, N J and K J. On January 13, 2015, these children were removed from Ms. X's home by the Alaska Office of Children's Service (OCS). In an Alaska court order, effective February 13, 2015, the children were committed to the custody of OCS. ¹

In separate requests for an administrative appeal for each of the children, Ms. X explained OCS took the children on January 13, 2015, and placed them with her parents for temporary custody. ² In her request for a hearing, Ms. X provided an attached copy of the court custody order. ³

¹ The court custody order is found at Exhibit 6, pages 4 -8.
² Ms. X's requests for administrative appeals are found at Exhibit 3.
³ Ms. X's request for a formal hearing is found at Exhibit 5.

The Division provided email exchanges between the Division and the Alaska Department of Health and Social Service. In these emails, Alaska Department of Health and Social Services explained that it had applied for these children's 2015 PFDs to keep them in trust for the children in compliance with Alaska Statute 47.10.115, because these children were placed in state custody prior to the 2015 PFD application deadline.⁴

Based on the evidence in the record, I find that it is not likely than not that the children were in the court ordered custody of Alaska Department of Health and Social Services on the 2015 PFD application deadline.⁵

III. Discussion

This appeal is not about the eligibility of Ms. X or the children C W, N J and K J. The issue is whether the 2015 PFD applications that Ms. X filed for the children should be paid, even though applications for the children were filed Alaska Department of Health and Social Services in accordance with Alaska Statute 47.10.115(a).

It is not clear from her appeal whether Ms. X misunderstood how this statutory provisions of AS 47.10.115 work in regards to the relevant date of custody, whether she thinks that the fact that there was a placement makes her eligible to apply for the children, or whether she is simply confused about what she needs to do to ensure the children eventually receive their 2015 PFDs.

Alaska Statute 47.10.115 provides:

Permanent fund dividend.

(a) The department shall annually apply for a permanent fund dividend and retain in trust under AS 43.23.015_(e) for the benefit of the child the dividend and accrued interest on the dividend if the child is in the custody of the department when the application is due.

(b) The department may not distribute the proceeds of a trust under this section unless

(1) the child has reached 18 years of age and is no longer in the custody of the department;

(2) the child has been adopted and one year has elapsed since the adoption;

(3) the child is no longer in the custody of the department and the child has been reunited with the child's parents; or

(4) ordered to do so by the court in the best interest of the child.

(c) Notwithstanding (b)(1) - (3) of this section, the department may not distribute the proceeds of a trust under this section if the payment would be made to a guardian of a child who had been in the custody of the department immediately

⁴ Exhibit 6, pages 1 -3.

⁵ Exhibit 6.

before the establishment of the guardianship, unless the guardianship was established under AS 13.26.090 - 13.26.150.

The “department” referred to in this statute is Alaska Department of Health and Social Services. “When the application is due” is March 31, 2015, the filing deadline for 2015 PFD applications. The court order shows that the children were in the custody of Alaska Department of Health and Social Services on that date. The order notes that the children were placed with their grandparents, but makes it clear the children’s status as being in state custody during this placement continues.

Under AS47.10.115(b)(3), Ms. X may apply to the Alaska Department of Health and Social Services for the children’s 2015 PFDs to be distributed when the children are no longer in the custody of the department and the children have been reunited with her. The Permanent Fund Dividend Division, which is within the Alaska Department of Revenue, no longer has jurisdiction over the distribution of the children’s 2015 PFDs. The Division correctly granted the 2015 PFD applications filed for these children by Alaska Department of Health and Social Services, and denied the applications filed by Ms. X.

IV. Conclusion

Ms. X’s children, C W, N J and K J, were in state custody on the 2015 PFD application deadline, only the Alaska Department of Health and Social Service was eligible to apply on these children’s behalf. Ms. X’s applications for these children were therefore correctly denied. The decision of the Division to deny the 2015 PFD applications of U X for her children, C W, N J and K J, for a 2015 permanent fund dividend is upheld.

DATED this 12th day of October, 2015.

By: *Signed* _____
Mark T. Handley
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 16th day of November, 2015.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]