

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

In the Matter of)
) OAH No. 20-0254-PFD
D Q-E) Agency No. 2018-024-6530
_____)

DECISION

I. Introduction

Acting as a sponsor, Ms. W M timely filed an electronic 2018 Permanent Fund Dividend (“PFD”) application on behalf of her minor nephew, D Q-E. On the application, Ms. M identified that D’s most recent Alaska residency did not begin until well into January 2017. D’s application was denied by the Permanent Fund Dividend Division (“Division”) because his application indicated his residency began after the December 31, 2016 cut-off for eligibility for a 2018 PFD. His application was further denied because he was not born to or adopted by Ms. M, and she had not demonstrated she was an eligible sponsor.

The denial letter specified that for the denial to be reversed, the Division must be provided within 30 days a request for appeal and additional supporting documentation. The Division did not receive an informal appeal request from Ms. M until 403 days after the deadline. It denied that request on the same basis it denied the application, and on the further basis that it was untimely.

Ms. M subsequently filed a formal hearing request and provided some documentation that was partially relevant to the present case. However, no justification was given for the late informal appeal request. She also requested that the hearing be conducted by correspondence.

This decision rejects the Division’s timeliness determination but affirms the Division’s denial of D’s 2018 PFD application based on the sponsorship issue. Although no dividend can presently be paid to D on account of the 2018 PFD application, if he can provide documentation establishing he began his Alaska residency no later than December 31, 2016, he may have an opportunity to receive the missed 2018 dividend by reapplying when he is older.

II. Facts

D Q-E is a minor, born in 2004.¹ He was on-file and eligible to receive 2005 through 2015 PFD dividends.² On February 7, 2018, W M, purporting to act as D's sponsor, timely filed an electronic application for a 2018 PFD on his behalf. The address identified for the application was Address A, Village A, Alaska 99545. Ms. M also indicated in the application that she was D's "Auntie" and that D's most recent Alaska residency began on January 2017.³

On July 13, 2018, D's 2018 PFD application was denied. As previously noted, the Division's reasons for the denial were that his application indicated his most recent residency began after the December 31, 2016 deadline necessary for re-establishment of residency for a 2018 PFD and because Ms. M had not demonstrated she was an eligible sponsor.⁴ The denial letter specified that in order to appeal the denial, Ms. M would need to:

1. complete a valid request to do so;
2. provide proof that D's most recent Alaska residency began prior to January 1, 2017; and
3. provide proof that she qualified as D's sponsor.⁵

It stated that she must do all three of these things by August 12, 2018. The denial letter was sent to the same Village A address used for D's application.⁶

No further communication was received by the Division regarding D's denied application until Ms. M supplied additional documents more than a year later, on September 19, 2019.⁷ The envelope delivering those items identified a return address for C and W M at Address B, Village B.⁸ The documents provided on that date were received by the Division 403 days after the informal appeal deadline.⁹

The received documents did not contain any justification for the late response. They also did not include: 1) a request for informal appeal and the necessary fee; 2) support that D had re-established residency on or before December 31, 2016; or 3) support that D was born to or

¹ Ex. 1.

² Ex. 2.

³ Ex. 1, p. 1.

⁴ Ex. 4.

⁵ Ex. 4.

⁶ Ex. 4.

⁷ Ex. 3; Ex. 5.

⁸ Ex. 9.

⁹ Compare Ex. 5 with Ex. 9.

adopted by Ms. M in 2016 or 2017, thus making her an eligible sponsor. Instead, the documents simply included a copy of D’s July 13, 2018 denial letter, and a copy of C and W M’s 2017 and 2018 United States Income Tax Returns identifying D as a dependent.¹⁰ Despite these irregularities in the documents received, the Division nevertheless treated them as a request for informal appeal and a valid fee waiver request.¹¹

On January 30, 2020, D’s 2018 PFD application denial was again upheld by the Division on the same basis it was initially denied, together with the added fact that no reasonable cause existed for the 403-day late informal appeal request.¹² In the denial letter, Ms. M was advised of her right to request a formal appeal and the need to show reasonable cause for the late appeal to be considered. Further, as she was previously instructed, Ms. M was also advised to provide additional proof that D had re-established his Alaska residency and that she was authorized by his parents to act as his 2018 PFD sponsor.¹³

Ms. M then timely submitted a somewhat confusing formal hearing request on behalf of D, herself personally, and arguably others, involving multiple dividends and years.¹⁴ She also requested that the formal hearing be conducted by written correspondence.¹⁵ Ms. M was given an opportunity to send any additional documents or correspondence for consideration in this appeal and an opportunity to respond to any further documentation received from the Division.¹⁶ The Division filed a formal hearing exhibit letter, a motion to dismiss late appeal request, a

¹⁰ Ex. 5. Among other things, the tax return provided indicated that D was Mr. and Mrs. M’s nephew. Ex. 5 at 9.

¹¹ This was in large part due to the financial documentation contained in the tax returns. Further, the Division had initially sent a follow-up letter to Ms. M on September 27, 2018, asking her to complete an informal appeal and fee waiver requests. In doing so, the Division used an old Village A address as opposed to Ms. M’s most recently provided Village B address. *Compare* Ex. 9 *with* Ex. 10. Because of this miscommunication and the tax documents earlier provided, the Division elected to treat the documents received from Ms. M as a valid informal appeal and fee waiver request. Division Position Statement, dated April 3, 2020, at 2.

¹² Ex. 7.

¹³ Ex. 7.

¹⁴ Ex. 8. The submitted documents included: a) a completed request for formal hearing form, dated February 28, 2020; b) a copy of the informal appeal decision, dated January 30, 2020; c) two copies of a recognition of Indian custodian document, recognizing Ms. M as the biological Aunt and custodian of D, issued on October 26, 2018; d) two copies of a letter from No Name School, dated February 6, 2020, confirming D’s enrollment and attendance from March 9, 2017 to September 10, 2018; e) Alaska Housing documentation establishing D’s right of occupancy in a dwelling located in Village B, since August 2018; f) a hand-written note from Ms. E R regarding the care of “[redacted],” dated June 30, 2018; g) C and W M’s 2017 and 2018 United States Income Tax Returns listing D as a dependent; and h) an Alaska Department of Health and Social Services Health Coverage Form for D, for the year 2017.

¹⁵ Ex. 8, p. 1.

¹⁶ Notice of Hearing by Correspondence, dated March 12, 2020.

position statement, and exhibits.¹⁷ Nothing further has been filed by Ms. M.

III. Discussion

Insofar as she is D's legal representative, Ms. M bears the burden of proving that the Division erred by denying D's 2018 PFD.¹⁸ In doing so, there are three issues for analysis. First, does reasonable cause exist to justify accepting the request for informal appeal 403 days after the deadline? Second, was Ms. M eligible to act as D's sponsor for the 2018 PFD? Third, has it been sufficiently demonstrated that D was an Alaska resident throughout the qualifying year? Although Ms. M prevails on the first procedural issue, she fails on the second issue. As for the third issue, if she is not D's sponsor, she cannot bind D on questions of legal residency. Consequently, D's 2018 PFD application must, for the time being, be denied. However, as discussed, D may have an opportunity to re-apply for his 2018 PFD once he turns 18, and at that time he can attempt to resolve the residency question.

A. *Basis for Current Denial*

1. Reasonable Cause for Late Appeal

The Division's initial notice of denial to Ms. M regarding D's 2018 PFD is flawed in the manner it notifies her of the ability to request an informal appeal. Because of this, reasonable cause exists for the late filed appeal request.

Per 15 AAC 05.010(b)(5), a request for appeal must be filed within 30 days of a notice of disallowance unless reasonable cause for the failure to do so is shown.¹⁹ This deadline is waivable by the administrative law judge on the similar but perhaps not identical basis that adhering to it would "work an injustice."²⁰ Finally, though not addressing adherence to or waiver of deadlines, an Alaska statute specifies what must be done to appeal a decision from the Division regarding PFD eligibility. Specifically, AS 43.23.015(g) provides:

[i]f an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may, upon payment of a \$25 appeal fee, request the department to review its decision.²¹

¹⁷ Formal Hearing Exhibit Letter, Motion to Dismiss Late Appeal Request and Position Statement, dated April 3, 2020.

¹⁸ 15 AAC 05.030(h).

¹⁹ 15 AAC 05.010(b)(5).

²⁰ 15 AAC 05.030(k). The regulation appears to delegate the decision to the ALJ hearing the case.

²¹ AS 43.23.015(g).

Case law provides that when interpreting statutes such as this which allow for the review of decisions, such statutes must be construed with strict fidelity to their terms.²²

Here, D's 2018 PFD application was denied by the Division on July 13, 2018.²³ Ms. M did not respond until September 19, 2019,²⁴ 403 days after the deadline to do so.²⁵ The question is whether reasonable cause exists for this tardy response.

Based on a plain reading of the appeal statute, all an applicant must do to secure their right to appeal is make a request and submit the appeal fee. However, that is not what the Division's notice of denial suggests. Instead, it instructs that:

If either the facts or the application of the law are incorrect, you have 30 days from the date of this letter to file a Request for informal Appeal.

To have this denial reversed, **all** of the following and a **completed and valid Request for Informal Appeal form must be submitted or postmarked by August 12, 2018.**

- Proof that the child's most recent Alaska residency began prior to January 1, 2017.
- Proof that you qualify as D's sponsor.²⁶

The problem with the Division's notice is that it attempts to link an applicant's right to appeal with 1) providing further proof; and 2) the need for an applicant to demonstrate that the facts or the law set forth in the denial are incorrect.

First, the notice tells the applicant that the material identified must be assembled and submitted "within 30 days of the date of this letter." However, the appeal statute does not make an applicant's right to appeal contingent on submission of evidence.²⁷ Instead, all that an applicant is required to do is to pay the necessary fee and submit an appeal request.²⁸ Likewise, the appeal regulation makes no mention of having to submit proof or argument along with the hearing request.

Further, and again contrary to what the Division's notice suggests, even where the Division is correct in its recitation of the law and facts, an applicant still possesses a right to

²² *Stone v. I.N.S.*, 514 U.S. 386 (1995).

²³ Ex. 4.

²⁴ Ex. 3; Ex. 5.

²⁵ Compare Ex. 5 with Ex. 9.

²⁶ Ex. 4, p. 2 (emphasis in original).

²⁷ AS 43.23.015(g).

²⁸ AS 43.23.015(g).

appeal. And such an applicant may even prevail on an appeal, because the Division might have erred in its analysis or its application of the law to the facts.

Therefore, the Division's denial letter is inaccurate in that an applicant may well construe it as requiring more to initiate an appeal than is practically or legally required, including by the Alaska Legislature in its creation of AS 43.23.015(g).²⁹ Requiring these additional items at the outset has no legal basis and acts as an improper deterrent to appeals.

Because the Division's denial letter misinformed Ms. M regarding what is required to perfect her appeal rights, I find that enforcement of the deadline would, more likely than not, work an injustice. Accordingly, the Division's motion to dismiss Ms. M's late filed appeal request is denied and the case will be considered on the merits.

2. Ms. M's Ability to act as D's Sponsor

Ms. M filed D's 2018 PFD application as his sponsor. Alaska law provides that "[a] parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent individual who is eligible to receive a payment under this section."³⁰ More specifically, sponsors must be natural or adoptive parents of the child, legal guardians, special authorized representatives who can show that they had "lawful and physical custody of the child" for the majority of the qualifying year, or court-appointed representatives.³¹

At the time of filing D's 2018 PFD application, Ms. M indicated that she was doing so in her capacity as his aunt. Normally, this would be insufficient to establish that Ms. M is an eligible sponsor since it was not shown that she fell into one of these categories. However, included in the documentation provided by Ms. M as part of the formal appeal request, she supplied a document titled "Recognition of Indian Custodian", identifying her as the biological aunt and custodian of D, as of October 2018. Ms. M also supplied documentation establishing that she and her husband claimed D as a dependent on their 2017 and 2018 tax returns.

While this documentation is potentially helpful for purposes of establishing eligibility for Ms. M's sponsorship for subsequent dividends, it does not demonstrate that Ms. M was an

²⁹ In this instance, it is recognized that Ms. M submitted neither an appeal fee nor an appeal request, both of which the statute does require. However, the Division already waived the fee requirement and also chose to construe the documents she submitted as a request for an informal appeal. As a consequence, the failure to submit the appeal fee or formal request in this instance is not determinative. Division Position Statement at p. 2.

³⁰ AS 43.23.005(c).

³¹ 15 AAC 23.113(c).

eligible sponsor for D’s 2018 PFD application. This is because the qualifying year for the 2018 PFD was the calendar year preceding the Dividend, or in this instance, January 1 through December 31, 2017.³² Because Ms. M’s custodian document was only effective as of October 2018, it does not demonstrate that she was an eligible sponsor for during the qualifying period for the 2018 PFD. For this reason, D’s application for a 2018 PFD must presently be denied.

3. Residency

To qualify for a PFD, a person must be an Alaska resident during the *entire* qualifying year.³³ In this instance, it must be shown by a preponderance of the evidence³⁴ that D was an Alaska resident for the entire period from January 1, 2017 through December 31, 2017.³⁵

However, on the 2018 PFD application submitted on D’s behalf, it indicated that his most recent Alaska residency only began as of January 21, 2017. Despite repeated requests for additional information and documentation seeking to show that D had re-established Alaska residency no later than December 31, 2016, no additional information on this point was ever provided. Ms. M did eventually supply several documents late in this appeal process. This documentation included:

- 1) two copies of a recognition of Indian custodian document, recognizing Ms. M as the biological Aunt and custodian of D, issued October 2018;³⁶
- 2) two copies of a letter from No Name School dated February 6, 2020, confirming D’s enrollment and attendance from March 9, 2017 to September 10, 2018;³⁷
- 3) Alaska Housing documentation establishing D’s right of occupancy in a dwelling located in Village B, since August 2018;³⁸
- 4) a hand-written note from Ms. E R regarding the care of “[redacted],” dated June 30, 2018;³⁹
- 5) C and W M’s 2017 and 2018 United States Income Tax Returns list D as a dependent;⁴⁰ and
- 6) an Alaska Department of Health and Social Services Health Coverage Form for D, for the year 2017.⁴¹

³² AS 43.23.005(a); 43.23.095(6).

³³ AS 43.23.005(a)(3) (emphasis added).

³⁴ 15 AAC 05.030(h).

³⁵ AS 43.23.005(a) and (c).

³⁶ Ex. 8, pp. 6-7.

³⁷ Ex. 8, pp. 8-9.

³⁸ Ex. 8, pp. 8-14.

³⁹ Ex. 8, p. 15.

⁴⁰ Ex. 8, pp. 16-19.

⁴¹ Ex. 8, pp. 20-21.

While these documents were helpful to establish D's potential Alaska residency both before and after the qualifying period at issue, none of the documents confirmed that D's residency was established or re-established no later than December 31, 2016. However, since Ms. M cannot act as D's sponsor, her failure to present complete proof on his behalf is not conclusive on the issue. The issue simply cannot be adjudicated until D himself, or a duly-recognized legal representative, is before the tribunal.

B. Potential for Later Re-Application by D for 2018 PFD

D is a minor, who, was apparently relying on the actions of his aunt, Ms. M, in making an application for his 2018 PFD. As such, it still may be possible for D to receive his 2018 PFD by re-applying when he is between the ages of 18 and 20. This is because regulations allow for a minor, upon turning 18, to overcome certain application irregularities where no eligible sponsor filed a timely and complete application or a complete application on the minor's behalf. Specifically, 15 AAC 23.133 provides as follows:

- (b) An individual who has reached majority, or who is an emancipated minor, may apply to the department for a prior year dividend if
 - (1) the individual had not reached majority by the end of the application period for the dividend year for which the individual is applying;
 - (2) a complete application . . . was not timely filed . . .; and
 - (3) the individual would have qualified for a dividend had an eligible sponsor applied on the individual's behalf during the pertinent dividend year.
- (c) An individual who qualifies under (b) of this section must file, before the individual reaches 20 years of age, an application prescribed by the department.

Accordingly, D will have an opportunity to reapply for his 2018 Dividends, on his own behalf, during the two-year window when he is between 18 and 20 years of age. In doing so, he will no longer be denied on the basis that Ms. M is an ineligible sponsor, since he will be applying for the application in his own right. Importantly, however, he will still be required to demonstrate that he had re-established his Alaska residency (or, in fact, had never severed his Alaska residency) no later than December 31, 2016, as addressed above.

It may be wise for Ms. M to retain this decision so that D can attach it to his application if, and when, he later applies during that two-year window.

IV. Conclusion

The Division’s motion to dismiss the appeal on grounds of untimeliness is DENIED. As discussed, applying the appeal deadline in these circumstances would work an injustice because the Division’s notice of appeal rights was inaccurate. However, the decision of the Division to deny the 2018 dividend to D Q-E is AFFIRMED since it has not been demonstrated that Ms. M is an eligible sponsor of that application.

This decision does not affect the D’s ability to reapply for his 2018 dividend when he turns 18.

DATED this 2nd day of June, 2020.

By: Signed
Z. Kent Sullivan
Administrative Law Judge

Adoption

This Decision 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of June, 2020.

By: Signed
Signature
Z. Kent Sullivan
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.]