

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

In the Matter of)	
)	
E.U.)	OAH No. 24-0721-PFD
)	
2023 Permanent Fund Dividend)	

DECISION

I. Introduction

E.U. appeals the denial of her 2023 Permanent Fund Dividend (PFD). At the initial eligibility level Ms. U was denied her 2023 PFD because she failed to timely deliver her application to the Permanent Fund Dividend Division (Division) by the March 31, 2023, deadline. At the informal appeal stage the Division upheld the denial on its prior determination of untimeliness. Ms. U timely requested a formal appeal hearing.

At the formal appeal level, the Division, represented by Mr. Scott, was forthright that the Division made an error when Ms. U presented herself at the Anchorage Dividend Information Office (ADIO) on December 12, 2023, and she was not given in-person information about and a copy of a D Form (disability application) along with a Licensed Healthcare Provider Certification of Disability form. The Division viewed the formal appeal process as an opportunity for its appeals section to re-visit the medical treatment issue with Ms. U in order to guide her and to obtain the required information to determine if she was eligible for her 2023 PFD due to her disability or medical treatment preventing the timely filing of her application.

Unfortunately, Ms. U failed to appear at the formal appeal hearing. Based upon, her failure to appear, a decision in this matter was required to be made solely on the written record.¹ The Division’s denial is affirmed in part, reversed in part, and remanded under the doctrine of equitable estoppel.

The Division’s denial of Ms. U’s “late 2023 application” application is affirmed to the extent that there is currently insufficient evidence to determine whether Ms. U qualified for the disability exception to the March 31, 2023, deadline for filing an application.

¹ 15 AAC 05.030(j).

However, the Division is reversed and equitably estopped from imposing the March 31, 2024, disability application deadline upon Ms. U. The Division is required to find that extraordinary circumstances exist to allow Ms. U to file a 2023 disability application packet more than one year after the normal filing deadline for such an application.

Ms. U's matter is remanded to the Division with the requirement that she be contacted and provided sufficient guidance and direction on filing a disability application and Licensed Healthcare Provider Certification of Disability form for her 2023 PFD.

II. Facts

E.U. is a longtime Alaska resident who has consistently applied for her PFD since 1989.² Division records show that Ms. U has been eligible for a PFD every year since 1989 except for 2012 and the current 2023 dividend on appeal.³

On September 18, 2023, the Division received a paper PFD application from Ms. U.⁴ The application was a 2022 Adult Application with a large "2023" written over the printed "2022" form date in black marker.⁵ She signed and dated the application on September 1, 2023, and a postmark of the envelope shows it was sent from the bush, possibly Town A, Alaska on September 14, 2023.⁶

Ms. U made an in-person visit to the ADIO on December 12, 2023. During this visit she was told that her 2022 application would be "invalidated" because she had "altered" the form by writing "2023" on the application.⁷ While she was at the office, she was provided a "late 2023 application."⁸

While at the ADIO Ms. U filled out and submitted the "late 2023 application" she was provided. She additionally submitted a handwritten addendum statement and circled code D on the application form under Adult & Child Absence Codes.⁹ Code D addresses medical treatment. Ms. U's written statement read:

In treatment during the filing period by the time I got out I only could filing a paper application but it unfortunately was a 2022

² Div. Ex. 1, pp. 8-9.

³ *Id.*

⁴ Div. Ex. 1, pp. 1-4.

⁵ Div. Ex. 1, p. 1.

⁶ Div. Ex. 1, p. 5.

⁷ Division Position Statement, pp. 1-2.

⁸ Div. Ex. 2, p. 1.

⁹ Div. Ex. 2, p. 5.

application. I marked off 2022 then 2023 mailed it in as soon as I could.¹⁰

Under the absence log portion of the “late 2023 application,” Ms. U wrote that she was at Southcentral Foundation Detox and that the filing date occurred while she was in treatment and had no access to “online”. She further stated that by the time she got out she couldn’t file online so she used an old 2022 application.¹¹

Ms. U’s “late 2023 application” was denied on March 29, 2024, based upon the determination that it was not received or postmarked on or before the March 31, 2023, filing deadline.¹² Ms. U submitted a timely request for an informal appeal on April 16, 2024.¹³ She did not provide any written statements or explanations in support of her informal appeal request. In response to her informal appeal request, the Division mailed Ms. U an Informal Conference by Correspondence (ICC) letter on August 12, 2024.¹⁴ The ICC letter sets forth three options for which Ms. U could provide information to qualify for an exception to the filing deadline; under disability on March 31, 2023, earning Hostile File/Imminent Danger pay, postal proof of a timely file 2023 application.

The ICC packet included a 2023 “D”/disability application and a Licensed Healthcare Provider Certification of Disability form.¹⁵ This appears to be the first time Ms. U was made aware of the disability exception to the March 31, 2023, filing deadline and was provided those forms. The ICC letter provided a deadline of September 11, 2024, to submit all documentation.¹⁶ However, regarding the D application (which was only one of the options discussed in the form letter), it did not explicitly override the statement on the application itself that the D application had to be “postmarked or received by the PFD Division by March 31, 2024.”¹⁷ No response or information was received from Ms. U and her informal appeal was denied on September 20, 2024.¹⁸

¹⁰ *Id.*
¹¹ Div. Ex. 2, p. 4.
¹² Div. Ex. 3.
¹³ Div. Ex. 4.
¹⁴ Div. Ex. 5.
¹⁵ Div. Ex. 5, pp. 3-5.
¹⁶ Div. Ex. 5, p. 2.
¹⁷ Div. Ex. 5, p. 3, second bullet.
¹⁸ Div. Ex. 6.

A request for a formal appeal hearing was timely received from Ms. U on October 28, 2024.¹⁹ On her formal appeal form, Ms. U only focused on and addressed the issue of the lack of timely mail delivery from Town A, asking if she needed to send a copy of her airline ticket as proof that her application was mailed from there.²⁰

According to the Division, an applicant's PFD application is normally subject to a higher level of scrutiny and review at the formal appeal level.²¹ During Mr. Scott's thorough review, he determined that a "Division Error" had occurred during Ms. U's December 12, 2023, in-person visit.²² Because Ms. U had made staff aware of the fact that she was receiving medical treatment during the 2023 filing period, she should have been given a copy of the disability application and Licensed Healthcare Provider Certification form while she was physically present at the ADIO. She also should have been very carefully advised of the March 31, 2024, deadline within which to complete and submit both of the forms. None of those things occurred during her visit.²³ Based upon this error, the Division appeared willing to address the possibility that Ms. U was eligible under the disability exception to the March 31, 2023, deadline and be given the opportunity to provide the information now to determine eligibility.²⁴

A hearing was scheduled for December 12, 2024. Multiple attempts were made to contact Ms. U on the hearing date in order to connect her to the hearing; both at her personal cell phone number and at her mother's phone number. Messages were left advising Ms. U how to contact OAH to participate in the scheduled hearing. Ms. U ultimately failed to appear at the hearing and OAH received no contact from Ms. U during the 10-day waiting period after the scheduled hearing.²⁵

III. Discussion

Analysis of Ms. U's application presents two issues. The first is whether, based upon the written record, Ms. U qualifies for an exception to the March 31, 2023, deadline

¹⁹ Div. Ex. 7.

²⁰ Div. Ex. 7, p. 2.

²¹ Division Position Statement, p. 3.

²² *Id.*

²³ Division Position Statement, pp. 3-4.

²⁴ *Cf.* 15 AAC 23.133(e).

²⁵ *See* 15 AAC 05.030(j).

due to being under a disability on March 31, 2023.²⁶ The second is whether equitable estoppel applies in this case due to the Division’s error, which the Division frankly acknowledges. Based upon an analysis of the application, the timeline, and the record, Ms. U fails to prevail on the first issue, but she succeeds on the second.

A. Qualification Under the Disability Exception

In order to qualify for a PFD, a person must file an application.²⁷ Applications must be filed between January 1 and March 31 of the dividend year.²⁸ There is no dispute that Ms. U’s 2023 PFD application was filed after the March 31, 2023, filing deadline.

The statutes governing the PFD program provide very narrow exceptions to the filing deadline. One such exception permits late filed applications from individuals who were prevented from filing on time due to being under a disability during the application filing period.²⁹ To qualify for this exception, the applicant must file a disability application along with a Licensed Healthcare Provider Certification form which includes confirmation that the individual was disabled on March 31 of the dividend year and a statement explaining why the disability prevented the timely filing of the application.³⁰

“[D]isabled means physically or mentally unable to complete and sign an application due to serious emotional disturbance, visual, orthopedic, or other health impairment....”³¹ Ms. U’s addendum to her 2023 late application, in which she indicates she was under continuous medical treatment under the care of a licensed physician, was in Southcentral Foundation Detox, and was in treatment during the filing period, triggers the question of whether she qualifies for the disability exception.

Because Ms. U failed to appear at the hearing in this matter, and the written record does not contain a disability application or a Licensed Healthcare Provider Certification form or the equivalent from her provider, there is insufficient evidence upon which to establish that Ms. U qualified for the disability exception to the normal filing deadline for the 2023 dividend. Because Ms. U has failed to meet her burden of proving she is qualified

²⁶ 15 AAC 23.133.
²⁷ AS 43.23.005(a)(1).
²⁸ AS 43.23.011(a).
²⁹ 15 AAC 23.133(d).
³⁰ *Id.*
³¹ AS 43.23.095(2).

for the disability exception based upon the present written record, the Division’s denial of her late 2023 PFD application filed on December 12, 2023, is affirmed.

For reasons set forth below, this affirmation does not preclude Ms. U from filing a disability application and Licensed Healthcare Provider Certification form for her 2023 PFD.

B. Equitable Estoppel

The Division candidly presented that when Ms. U presented herself at the ADIO on December 12, 2023, Division staff committed several errors. First, they notified Ms. U that her 2022 PFD application would be invalidated because of the way she submitted her 2023 application, crossing the date out and writing “2023” in black marker. Telling her that this would invalidate the prior year’s application was inaccurate. Second, they failed to provide her with a disability application and the required Licensed Healthcare Provider Certification of Disability form and counsel her on the short deadline of March 31, 2024, that she had to submit the completed forms. Instead, staff merely had her fill out a “late 2023 application,” and did not remedy the error after seeing her handwritten addendum directly implicating her possible inability to file during the application period due to being under disability or medical treatment.

As the Alaska Supreme Court has stated in *Crum v. Stalaker*³²:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the government body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

Similar to this matter, in *Crum* the Division of Retirement failed to provide an individual the proper forms to timely obtain credit to his retirement account for his unused sick leave.³³ The Supreme Court found that because the Division of Retirement had an obligation to provide the individual with the proper forms, an omission in failing to provide a form or clear notice of a procedure to apply satisfies the first element of applying estoppel against the government.³⁴

³² 936 P.2d 1254, 1256 (Alaska 1997).

³³ 936 P.2d at 1255-566.

³⁴ *Crum v. Stalaker*, 936 P.2d at 1257-58.

Here, based upon the Division’s concession, there is no question that Ms. U was not provided with the proper forms, counseling, and instruction for timely filing a disability application when she presented herself at the ADIO – thereby meeting the first element of estoppel.

As to the remaining questions, Ms. U’s inability to file a disability application within the one-year deadline set by regulation is a direct result of the Division’s error in failing to provide her with the disability application form, the Licensed Healthcare Provider Certification of Disability form, and counseling her about the March 31, 2024, deadline that applied to their filing.³⁵ And Ms. U acted in reasonable reliance that the “late 2023 application” she was given was her only application option under the circumstances. Finally, applying estoppel serves the public interest by preserving the department’s policy of giving disabled PFD applicants a fair opportunity to apply notwithstanding their disability.

As set forth above, there are very few exceptions to the PFD filing deadline. One of the few exceptions the statutes recognize is where an Alaska resident is suffering under a disability that prevents them from meeting the deadline. The interest of justice calls for permitting Ms. U – who timely articulated that she may have been under a disability during the filing period – to file a late disability application packet, so that she is provided a full and fair determination regarding whether she meets the disability exception to the 2023 filing deadline.

Having met all the established elements, the doctrine of equitable estoppel applies to the Division related to enforcing the March 31, 2024, disability application deadline for Ms. U’s 2023 PFD. The Division is required to find that extraordinary circumstances exist to allow Ms. U to file a 2023 disability application packet more than one year after the March 31, 2024, filing deadline.

Ms. U’s matter is remanded to the Division with the requirement that reasonable attempts be made to contact her and provide her with sufficient guidance and direction on filing a disability application and Licensed Healthcare Provider Certification of Disability form for her 2023 PFD, with clear communication regarding a deadline by which she must

³⁵ 15 AAC 23.133(e).

submit a completed packet. This guidance should be oral, if at all possible, followed up with clear written communications.

Nothing herein should be construed to criticize the Division as a whole, which showed through its filings, that it has genuine concern for disabled applicants. The authorization provided by this decision allows the Division to go back and rectify the situation, providing the counseling it would have liked its ADIO employee to have given initially.

IV. Conclusion

The Division's denial of Ms. U's 2023 PFD is **AFFIRMED IN PART, REVERSED IN PART, and REMANDED WITH INSTRUCTIONS** as set forth above.

Dated: January 7, 2025

Signed _____
Beth Goldstein
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 31st day of January, 2025.

By: *Signed* _____
Signature
Beth Goldstein
Name
Administrative Law Judge
Title

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