

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

In the Matter of

S. O. C.

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OAH No. 23-0518-PFD

DECISION AND ORDER

I. Introduction

S. C. timely submitted a paper application for a 2019 Permanent Fund Dividend (Dividend), albeit only partially completed. After the Division sent Mr. C. letter requesting the missing information and did not receive a reply, Mr. C.'s application was denied. In November 2022 Mr. C. inquired at a PFD office about his dividend and learned that his 2019 application had been deficient. Several months later he hand delivered a request for an informal appeal and provided the majority of the missing information, but the Division declined to entertain an informal appeal because it was submitted long after the deadline and, in any event, was still missing requisite information to establish his eligibility. Mr. C. then requested a formal hearing, again doing so past the deadline, appealing the Division's decision not to grant him an informal appeal. The division filed a Motion to Dismiss, arguing that his 2019 PFD application was deficient, and that his request for an informal hearing was submitted outside the appeal deadline.

This case was set for a hearing by correspondence and the parties were given until September 21, 2023 to submit any additional documents to the Office of Administrative Hearings (OAH) for consideration. The Division submitted a position statement and eight exhibits. Mr. C. made no submissions. Mr. C. and the PFD Division were allowed until October 5, 2023, to file a written response to any information provided by the other side. No responses were received. After reviewing the evidence, the Division's Motion to Dismiss is DENIED. Mr. C. provided reasonable cause for failing to file within the time allowed, and dismissing his appeal request would represent an injustice.

II. Facts

Mr. C. timely submitted his paper application for a 2019 PFD on March 29, 2019, and listed his physical address as Address A. in Anchorage, Alaska.¹ The application, however, included several blank pages. On November 29, 2019 the Division sent Mr. C. a notice to his Address A. address soliciting the missing information.² Receiving no response, on February 14, 2020, the Division issued Mr. C. a letter to the same address notifying him that his application was denied as insufficient information was provided to establish his eligibility for the 2019 PFD.³

On November 15, 2022, Mr. C. went to the Anchorage PFD to inquire as to why he did not receive the 2019 PFD. He was provided a copy of the denial letter, and the form to request an informal appeal.⁴ On February 7, 2023, 1,058 days after the 30-day appeal deadline from his 2020 denial, Mr. C. filed his request for an informal appeal, and provided the majority of the information missing from his original application.⁵ In response to the request for two adult Alaska residents who could verify his Alaska residency as required under 15 AAC 23.173(a), however, he listed two names, but did not provide their requisite contact information.⁶

On May 17, 2023 the Division sent Mr. C. a letter to the PO box address he listed on his informal appeal informing him he would not receive the 2019 PFD due to his untimely request for an informal appeal and incomplete 2019 PFD application.⁷

On July 31, 2023, 45 days after the 30-day appeal deadline, Mr. C. submitted a request for a formal hearing.⁸ The case was referred to this tribunal, the Office of Administrative Hearings, on August 9, 2023.

III. Discussion

To appeal a denial of a PFD, an applicant must fill out a request for an informal appeal form and submit it to the Division “within 30 days after the date the ... decision is

¹ Ex. 1.

² Ex. 2.

³ Ex. 3.

⁴ Division’s Position Statement, p. 2.

⁵ Ex. 4. *See* 15 AAC 05.030(a).

⁶ *Id.*

⁷ Ex. 6.

⁸ Ex. 7. *See* 15 AAC 05.030(a).

issued.”⁹ However, a due date can be waived by the administrative law judge if adhering to the timeline would “work an injustice.”¹⁰ It is Mr. C.’s responsibility to demonstrate that such an injustice would occur, or that he had reasonable cause for submitting his request several years late.”¹¹

Historically waivers for the PFD deadlines have been granted only in the most compelling of circumstances. A review of prior decisions issued by this tribunal show that the majority of waivers were granted in situations where the Division made an error or issued directives that were confusing.¹² There are exceptions, however. In the case *In re N.B. 19-0904-PFD*, the proposed decision found that an applicant who submitted an unsigned 2018 PFD application and requests for an informal and formal hearing 600 and 124 days late, respectively, provided no reasonable cause for the untimely submissions. The Division’s Motion to Dismiss was granted. The Commissioner declined to adopt the decision, however, and remanded it back to the Office of Administrative Hearings to grant the informal hearing request.

In this case there was nothing factually misleading about the Division’s correspondence with Mr. C. The PFD denial letter sent to him in February 2020 clearly explained why he was ineligible to receive a dividend and the steps for appealing the decision.¹³ However, the Division’s standard two-page request for an informal appeal requests the applicant’s contact information. When Mr. C. submitted his February 2023 request he listed a post office box address, contact phone number and email.¹⁴ He also responded to the question, If we [the Division] need to make contact, should we write, email or call? by checking the box for email.¹⁵ There is no evidence in the record that the Division’s subsequent correspondence was ever sent to his email instead of his mailing address, as he requested. This is a significant oversight, as in his July 2023 request for a Formal Hearing Mr. C. explained,

⁹ *Id.*

¹⁰ 15 AAC 05.030(k).

¹¹ 15 AAC 05.010(b)(5).

¹² *See generally*, Alaska Department of Administration, Office of Administrative Hearings, Late Appeal of Division’s Decision or Action, *available at* <https://aws.state.ak.us/OAH/Category/Subcategory?sub=946>.

¹³ Ex. 3, 4.

¹⁴ Ex. 4.

¹⁵ *Id.* In his initial 2019 PFD application Mr. C. listed a physical address. In his request for an informal appeal, he lists a PO Box. It appears that in the interim between the submission of his application and his request for an informal hearing he may have lost his housing.

Can't see thought I fill out the application I can't afford glasses as I am homeless. Because I am homeless it is hard for me to get to the office to meet appeal deadlines to include this one.¹⁶

Mr. C.'s unstable living situation and untreated vision issues represent reasonable cause for his submitting an incomplete 2019 PFD application and an untimely request for an informal hearing. Additionally, denying him of an informal appeal would be an injustice, as doing so would prevent him from having an opportunity to not only provide the missing application information, but also potentially submit a Certification of Disability verifying that his compromised vision interfered with his ability to properly complete his 2019 application.¹⁷

IV. Conclusion and Order of Remand

Mr. C. represented that he was homeless, vision impaired, and could not afford a pair of glasses, which represents reasonable cause under 15 AAC 05.010(b)(5) for his untimely, incomplete 2019 PFD submission and subsequent untimely request for an informal hearing. Additionally, his request for an informal hearing specifically requested that the Division contact by email, presumably due to his transient living situation. This request was not honored by the Division, potentially compromising his due process right to appropriate notice. Therefore, the Division's Motion to Dismiss is DENIED, Mr. C.'s deadline for submitting an informal appeal is WAIVED and this case is remanded back to the Division to grant his request for an informal hearing, with a reminder to correspond with Mr. C. via email, unless and until he notifies the Division otherwise. Because of the indications that Mr. C. may be disabled, the Division is directed to work with him or with his guardian, if any, to ensure that he has an opportunity to submit a disability form.

Dated: October 6, 2023

Signed

Danika B. Swanson
Administrative Law Judge

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

¹⁶ Ex. 6.
¹⁷ 15 AAC 05.010(b)(5).