

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

IN THE MATTER OF:

M.J.

Case No. OAH 07-0508-PFD

2006 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

M.J. asserted that she had timely applied for a 2006 permanent fund dividend. She filed a re-filed application in November of 2006. The Permanent Fund Dividend Division determined that Ms. J. did not timely file an original application and was therefore not eligible to file a re-filed application, and it denied the re-filed application initially and at the informal appeal level. Ms. J. requested a formal hearing. A formal hearing was held on September 18, 2007. Ms. J. was represented by her daughter, S.J. The Division was represented by Susan R. Pollard. The record in this case closed on October 16, 2007, after the Division filed its supplemental position statement.

This case is Ms. J.'s appeal of the Division's determination that she is not eligible to file a re-filed application for a 2006 PFD. Ms. J. had argued that she did timely mail her original 2006 PFD application. The Division asserts that it does not have a copy of original 2006 PFD application that Ms. J. claims that she filed during the application period in the spring of 2006. Ms. J. admits that she does not have a mailing receipt. Based on the evidence in the record, I have determined that Ms. J. probably did not mail a 2006 PFD application during the 2006 application period, although she honestly believes that she did. I have also concluded that Ms. J. is eligible to receive a 2006 PFD based on her late filed "re-filed" application because her medical conditions prevented her from being able to file a 2006 PFD application during the 2006 PFD application period.

II. Facts

Ms. J. filed a "re-filed" 2006 PFD application in November of 2006 because she did not receive a 206 PFD and the Division informed her that it did not have her 2006 PFD application on file.¹ Ms. J. rememberd one of her daughters helping her complete the 2006 PFD application.²

¹ Recording of Hearing & Ex 1, 2 & 3.

² Recording of Hearing.

Ms. J. also remembers taking a cab to the post office and having mailed her 2006 PFD application by giving it to a woman at the front counter.³ Ms. J. admits that she has no documentation of her mailing or witnesses to her mailing other than herself.⁴

Ms. J. is an 80-years-old Alaska Native.⁵ Her daughter testified that her memory is not as good as it once was.⁶ Ms. J. did not testify herself, but communicated through her daughter

S.J. S.J. testified that she thinks that if her mother remembered taking a cab to mail her PFD application that her mother probably did, but S.J. later admitted that her mother does not really remember which of her daughters helped her complete the application.⁸

At the hearing, S.J. was protective of her mother in the sense of being somewhat defensive regarding her mother's ability to function independently. At the same time, it was apparent that she, her sisters, and her mother had been having some difficulty ensuring that her mother's business affairs were being taken care of.⁹

For example, at the hearing, the Division asked if Ms. J. remembered filing a 2007 PFD application. After consulting with her mother, S.J. stated that Ms. J. remembered one of her daughters filling it out for her, but she did not remember if it was actually filed. S.J. was concerned that it may not have been filed and expressed some frustration at the lack of coordination between herself, her sisters and her mother to ensure that it had been filed. Then Division testified that it did have a 2007 PFD application on file and that application was filed at the Division's Fairbanks Office. S.J. expressed relief that they would not have to go through the appeals process again.¹⁰

S.J. also explained that her mother has had rheumatoid arthritis for many years and has been seeing an oncologist and undergoing chemotherapy every three months.¹¹

The record was held open so that S.J. could obtain a letter from her mother's physician explaining Ms. J.'s medical condition during the 2006 PFD application period as it relates to her ability to timely file her 2006 PFD application. Ms. J.'s physician, J.M.C., MD., did return a form provided by the Division, which included the definition of disabled

³ Recording of Hearing & Ex 1, 2 & 3.

⁴ Ex 5.

⁵ Ex. 5, page 2.

⁶ Recording of Hearing & Ex 1, 2 & 3.

⁷ Recording of Hearing & Ex 1, 2 & 3.

⁸ Recording of Hearing & Ex 1, 2 & 3.

⁹ Recording of Hearing & Ex 1, 2 & 3.

¹⁰ Recording of Hearing & Ex 1, 2 & 3.

¹¹ Recording of Hearing & Ex 1, 2 & 3.

under AS 43.23.095, and asked if it was true or false that Ms. J. met this legal definition on March 31, 2006. Dr. C. checked the blank after the word false and provided a letter in which he wrote:

M.J. is a patient under my care for significant medical problems requiring intermittent treatment. As a result of her illness and as a result of the stress from the illness, there may be times when she is less attentive to details in her life. Hopefully this can be taken into consideration in helping her resolve her Permanent Fund filing. I certainly believe that as a result of her medical problems and stress that she may have inadvertently not filed in a timely fashion.¹²

III. Discussion

A PFD application must be filed between January 2 and March 31 of the dividend year to be timely.¹³ However, "if an individual was disabled, as defined in AS 43.23.095, during the application period of the prior year and, as a result of the disability, did not timely file an application, that individual or an authorized representative may submit an application for the prior year dividend."¹⁴ "'Disabled' is defined under AS 43.23.095 as "physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause...".¹⁵

I find that Ms. J. was not able to complete her application due to serious health impairments.¹⁶ The Division points out that Dr. C. did not check the right space on the form provided. However, the regulation cited by the Division to support its position that Dr. C.'s statement does not meet the burden of proving that Ms. J.'s disability caused her late filing does not require that the physician check a certain box on the Division's form.¹⁷ Rather, the regulation requires that the care provider provide confirmation that Ms. J. was disabled on March 31, 2006.¹⁸

In close cases like the present one, ultimately the Commissioner of Revenue, rather than the treating physician, has the authority to determine if the applicant's medical condition, as described by the care provider, meets the statutory definition of disability for the purpose of PFD eligibility.

¹² Letter from Dr. C. dated October 9, 2007.

¹³ AS 43.23.011.

¹⁴ 15 A A C 23.133(d).

¹⁵ AS 43.23.095(2).

¹⁶ Recording of Hearing & Letter from Dr. C. dated October 9, 2007.

¹⁷ 15 A A C 23.133(d)(1) & Division's supplemental position statement.

¹⁸ 15 A A C 23.133(d)(1).

The care providers may be able to describe a patient's condition, but they are not legal experts and do not have the last word on whether a specific medical condition will meet the requirements necessary to allow a late PFD filing under the regulations promulgated by the Department of Revenue.

The Division's form simply provides the statutory definition of "disabled" for the purpose of excusing a late filing, but that definition implies that if any physically or mentally impaired individual who could still fill out the application would not be disabled. This reading is incorrect. The form could therefore mislead applicants and care providers as to the legal standard as it applies to a specific case.

In prior decisions adopted by the Commissioner of Revenue, it has been held that an individual whose medical condition impaired that person's ability to file sufficiently to cause the late filing met the statutory definition of disabled. An individual whose memory is sufficiently impaired by age, stress, or poor health, to render that individual unaware of the impending deadline may be disabled. A medical condition might be disabling if it made an applicant confused about whether he or she had already filed that year. This applicant would be disabled for the purposes of timely filing even if the applicant, on any given day, could fill out a PFD application if asked.

It is often difficult for caring family members to identify when and to what extent an aging parent may need assistance in ensuring that deadlines in their business affairs are met. It is clear that for some time, Ms. J.'s daughters have been attempting to provide Ms. J. with whatever assistance she needs, while respecting her need for independence.

S.J. found the terms used in the statutory definition on the form startling, and the implication that they could apply to her mother was somewhat disturbing and offensive. Ms. J. and her daughter should be reassured, however, that after working through the legal terminology, the question that needs to be answered is simply whether it was Ms. J.'s medical problems or just an isolated instance of normal forgetfulness which many Alaskans experience that prevented her timely filing.

This is a close case. The fact that the Division does not have Ms. J.'s application is strong evidence that it was never mailed. Although it is possible that the post office or the Division lost the application, it is much more likely that Ms. J. forgot to mail it, but thought that she had, confusing a memory of a previous filing with the 2006 PFD filing period.

Dr. C.'s written statement "confirms" the other evidence in the record which shows that that Ms. J. was disabled on March 31, 2006, in the sense of having medical conditions that

rendered her unable to complete her application. An individual must be able to timely file an application in order to be able to complete it. Ms. J.'s medical conditions were disabling under the statutory definition, causing her to miss the deadline due to illness, illness induced stress, and memory problems. In the spring of 2006, these problems at least temporarily caused her to suffer enough distraction and confusion to fail to file, and at some point to believe that she had already filed when she had not.

IV. Conclusion

Ms. J. is eligible for a 2006 dividend.

V. Order

IT IS HEREBY ORDERED that the application of M.J. for a 2006 permanent fund dividend be GRANTED.

DATED this 3rd day of December, 2007.

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

DATED this 2nd day of January, 2008.

By: Mark T. Handley
Administrative Law Judge

The undersigned certifies that
this date an exact copy of the
foregoing was provided to the
following individuals:

PFD Division
1/2/08