

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

| | | |
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| In the Matter of |) | |
| |) | |
| D. S. |) | OAH No. 09-0033-PFD |
| |) | Agency Nos. 2003-024-5185 |
| <u>2003 - 2008 Permanent Fund Dividends</u> |) | 2004-037-3131, 2005-055-8354 |

DECISION

I. Introduction

D. S. timely applied for 2003, 2004, and 2005 Permanent Fund Dividends (PFDs) while living on the Kenai Peninsula. The Permanent Fund Dividend Division denied each of the applications because Mr. S. had failed to respond to requests for additional information.¹ Each of the denials was issued in the same year as the denied dividend.

Mr. S. initiated informal appeals of the three denials in late 2008, which the PFD Division rejected as untimely. Mr. S. promptly requested a formal appeal, adding the 2006 - 2008 dividends to his request.

The division moved to dismiss the formal appeal on timeliness grounds. The motion was heard through a live hearing, with Mr. S. in attendance, on March 2, 2009. Because he initiated the 2003 – 2005 appeal processes too late and he has not made a strong enough case for a waiver of the appeal deadlines, and because there is no jurisdiction to adjudicate the 2006 – 2008 dividends since Mr. S. neither applied for them in the first instance nor pursued the informal appeal procedure, the motion is granted and Mr. S.’s entire appeal is dismissed.

II. Facts

All facts set out below are based on Mr. S.’s testimony at the hearing unless otherwise footnoted.

Mr. S. most recently moved to Alaska in 2001, having lived in the state previously and then spent some time Outside. He is now in his late thirties.² Since 2002, he has not been disabled and has not been in military service.

On January 19, 2003, Mr. S. applied for a 2003 PFD.³ Later that year, the Division apparently requested additional information from Mr. S., which he apparently did not provide

¹ The denials are at Exhibits 2A, 3B, and 3C.
² Exhibit 1A, p. 1 (2003 Adult Application).
³ *Id.*

within the allotted time.⁴ In any event, on November 20, 2003 the Division denied the 2003 application because “[w]e didn’t receive the information we requested.” The denial informed Mr. S. that he had 60 days to initiate an informal appeal.

On March 1, 2004, Mr. S. applied for a 2004 PFD.⁵ Later that year, the Division apparently again requested additional information from Mr. S. He seems to have provided some information on August 29, 2004, which may or may not have been within the time frame the Division set for him and may or may not have been the information the Division was seeking.⁶ In any event, on November 15, 2004 the Division denied the 2004 application on the basis that “[w]e did not receive the information we requested.”⁷ The denial informed Mr. S. that he had 60 days to initiate an informal appeal.

On March 30, 2005, Mr. S. applied for a 2005 PFD.⁸ On August 18 of the same year the Division requested additional information from him to document his physical presence in Alaska.⁹ Mr. S. apparently did not respond; on October 28, 2005 the Division denied the 2005 application on the basis that the requested information had not been submitted.¹⁰ The denial informed Mr. S. that he had 60 days to initiate an informal appeal.

All three of these denials were correctly addressed. Mr. S. does not dispute that he received them, although at one point during the 2003 – 2005 period he was living in Seward while still using a Homer mailing address and thus his receipt of mail was delayed. He did not initiate an appeal of any of the denials because he did not realize—until educated by his sister in 2008—that appeals were possible.

Discouraged by these denials, Mr. S. did not apply for the 2006, 2007, or 2008 PFDs.

Mr. S. submitted informal appeal forms regarding the 2003, 2004, and 2005 denials on December 1, 2008. About a week later, the Division denied the three informal appeals on the ground that Mr. S.’s appeal rights had expired several years previously. Mr. S. submitted a request for formal appeal encompassing the three informal appeal denials and his 2006 – 2008 PFDs as well.

⁴ Exhibit 2A (2003 Denial Letter).

⁵ Exhibit 1B (2004 Adult Application).

⁶ Exhibit 2B (2004 Adult Supplemental Schedule and documents indicating residency).

⁷ Exhibit 3B (2004 Denial Letter).

⁸ Exhibit 1C (2005 Adult Web Application).

⁹ Exhibit 2C (Letter to Mr. S.).

¹⁰ Exhibit 3C (2005 Denial Letter).

III. Discussion

A. 2003 – 2005 Dividends

The appeal process for a PFD must be initiated by a request for an informal appeal, which can then be followed, if necessary, by a formal appeal.¹¹ For the 2003 to 2005 dividend years, the time limit to initiate an informal appeal decision was “within 60 days after the date of the notice of . . . disallowance.”¹² (This time limit has since been shortened, but the change applied only to later dividend years.) There is no dispute that Mr. S. missed the 60-day deadline by several years with respect to each of the 2003 – 2005 denials. However, the regulations also provide that “[t]he hearing officer may waive any . . . deadline established in [the informal and formal appeal regulations] if it appears to the officer that strict adherence to the deadline . . . would work and injustice.”¹³

Historically, waivers of the appeal deadlines have been granted only in particularly compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

In re N., OAH No. 05-0595-PFD (2006): Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. Six-month delay in filing appeal not excused.

In re B., Caseload No. 040286 (2004): Division’s denial had errors that may have caused confusion about appeal deadline. Delay of “a week or two” might have been excusable. One year delay in appeal not excused.

In re G., Caseload No. 030739 (2004): Applicant missed deadline because he failed to give division a change of address. One year delay in appeal not excused.

In re H., Caseload No. 040315 (2004): Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. Two-and-a-half month delay in properly initiating appeal was excused.

In re S., Caseload No. 040154 (2004): Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. Six-month delay in properly initiating appeal was excused.

In re C.D.M., OAH No. 05-0412-PFD (2005):¹⁴ Applicant was one month late in initiating his informal appeal of a denial of his 2004 PFD, and had no explanation. Delay not excused.

In re S.Z., OAH No. 05-0281-PFD (2005):¹⁵ Applicant was eleven months late in initiating her informal appeal of a denial of her 2003 PFD. She had not seen the denial

¹¹ 15 AAC 05.010(h).

¹² 15 AAC 05.010(b)(5) [prior to 2006 amendment].

¹³ 15 AAC 05.030(k).

¹⁴ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

letter and had not noticed anything was amiss. Delay not excused because “applicants have some responsibility to keep informed.”

In general, waivers have been available where the conduct of the division caused confusion that contributed to delay in starting an appeal, and even then the amount of extra time granted has not been unlimited. An applicant’s busy life or his neglect to inform himself about his appeal rights is not ordinarily a basis to waive the appeal deadline. In this case, the denial letters informed Mr. S. of his right to appeal and the time limit to do so, but he apparently did not read or pay attention to this information. There was nothing misleading about the PFD Division’s correspondence with Mr. S.

The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past. In this case, it is regrettable that Mr. S. missed the deadlines, because he may well have had a strong case that the underlying denial of his PFD was mistaken, particularly in 2004 when he did take the trouble to provide supplemental information about his residency. His delay in initiating the appeal is so great, however, that there is no injustice in preventing him from reopening these matters in late 2008.

B. 2006 – 2008 Dividends

Mr. S. included the 2006 – 2008 dividend years in his request for formal appeal, but these years were not encompassed in his prior informal appeals. No formal appeal may be conducted unless the individual has first pursued an informal appeal.¹⁶ Therefore, this tribunal does not have jurisdiction to adjudicate the later dividends. Of course, Mr. S. concedes that he did not apply for the 2006 – 2008 PFDs, a fact that would ordinarily end all inquiry since the Legislature has made applying to the department the first prerequisite to eligibility for a dividend.¹⁷

IV. Conclusion

Because Mr. S.’s requests for informal appeal were filed after the deadline in 15 AAC 05.010(b), and because he has not established a basis for a multi-year waiver of the deadline under 15 AAC 05.030(k), his appeal of the denial of his 2003, 2004, and 2005 PFDs is

¹⁵ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

¹⁶ 15 AAC 15.010(h).

¹⁷ Alaska Statute 43.23.005(a) (“An individual is eligible to receive one permanent fund dividend . . . if the individual (1) applies to the department . . .”).

dismissed. Because there has been no informal appeal at all regarding the 2006 – 2008 dividends, his formal appeal regarding those dividends is dismissed as well.

DATED this 3rd day of March, 2009.

By: Signed
Christopher Kennedy
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 31st day of March, 2009.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]