

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

In the Matter of)	
)	
T. J. B.)	OAH No. 09-0034-PFD
)	Agency No. 2008-062-3174
<u>2006 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

T. J. B. appeals the Permanent Fund Dividend Division’s denial of her application for a 2006 permanent fund dividend (PFD). The division denied her application initially and at the informal appeal because it determined Ms. B. did not file before the filing deadline. Ms. B. requested a formal hearing. The hearing took place on March 2, 2009. Ms. B. appeared in person and represented herself. She was accompanied by P. K., Ms. B.’s case worker from Mat-Su Health Services. Peter Scott appeared by telephone for the division. Ms. B. has not established that it is more likely than not that she was prevented from timely filing by the division or that she met the definition of disabled. Therefore she is not excepted from the 2006 PFD filing deadline. The decision of the division is affirmed.

II. Facts

Ms. B. filed a 2006 PFD Form D, Application by Disabled Adult, (Form D). She dated her application April 6, 2006 and it was received by the division on April 10, 2006.¹ Her application was originally denied because the division believed she had not established residency before January 1, 2005, the qualifying year for the 2006 PFD.² She appealed and upon further consideration, the division reversed its initial denial.³ The division continued its review of her application and found “other issues ... that were not addressed in the initial eligibility determination” and subsequently denied the application because it was filed late and lacked proof of disability.⁴ This appeal followed.

Ms. B. is considered disabled by Social Security and receives Social Security Disability income. She testified that she was given the Form D by the division before the filing deadline

¹ Exhibit 1 at 1.
² Exhibit 6.
³ Exhibit 7; Exhibit 8.

and instructed to have her healthcare provider complete the divisions Physician's Certificate of Disability. She unsuccessfully attempted to find a provider to complete the form. Ms. B. provided a note from her physician stating that she "is permanently disabled due to musculo-skeletal problems; however she would be able to sign and submit forms."⁵ The note, dated October 24, 2006, also stated that Ms. B. was seen in the clinic on March 23, 2006. This date is relevant because Ms. B. asserts it is evidence that she was attempting to complete her application in a timely manner and that her inability to timely file was due to the division providing her with the wrong form.

Ms. B. testified that she had difficulty comprehending and completing forms. For this reason, at the hearing's conclusion, the record remained open to provide Ms. B. with another opportunity to provide a healthcare provider's certification. On February 24, 2009, Ms. B. submitted a letter from Ellen Linsley, LCSW. The letter explained that Ms. B. had "difficulty with reading comprehension and completing paperwork necessary for various activities."

Mr. Scott testified that the Form D is not available for distribution until after the filing deadline. He testified that he had personal knowledge of this fact from a prior position held in the division. He held that position from 2005 – 2007. Therefore, the division argues that Ms. B. could not have received the Form D prior to the filing deadline and her position that she filed late because the division provided her with the wrong form was without merit.

III. Discussion

This case begins with the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year. After the filing deadline the division makes certain forms available for individuals seeking an exception to the filing deadline, including the Form D. Mr. Scott's testimony on this point is reasonable and credible. The evidence relied upon by Ms. B., that she was seen by her provider on March 23, 2006, is insufficient to support a finding that she received a Form D prior to the filing deadline. This is because the note from her physician does not indicate that she provided a certificate for completion or otherwise indicate that Ms. B. presented or sought a statement of disability at that visit. Therefore, on the evidence presented it is more likely than not that the

⁴ Exhibit 8; Exhibit 9.

⁵ Exhibit 4 at 2.

Form D was unavailable for distribution prior to the filing deadline. Thus, to prevail, Ms. B. must fit within an exception to the filing deadline.

The statute itself provides only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services and eligible for hostile fire or imminent danger pay.⁶ Ms. B. was not in the armed forces.

There is an additional exception in a department regulation, 15 AAC 23.133(d), that permits late applications from individuals who were prevented from filing on time by a disability. Either the individual or an authorized representative may make the late application.⁷ To qualify for that exception, the applicant must file a Form D, which is available after the filing deadline, and provide a certification from a licensed health care provider that includes:

- (1) confirmation that the individual was disabled on March 31 of the dividend year for which the individual is applying; and
- (2) a statement explaining why the disability prevented the applicant from timely filing an application during the application period⁸

“‘[D]isabled’ means physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment....”⁹ Ms. B.’s February 24, 2009 post hearing submission neither confirms that she was disabled on March 31, 2006 nor does it explain why her difficulty with reading comprehension and completing paperwork prevented her from timely filing. Accordingly, it is insufficient evidence upon which to establish that Ms. B. met the PFD statutory definition of disabled during the 2006 application period. Ms. B. does not have the necessary certification of disability required by regulation and the division’s denial of her 2006 PFD application should be affirmed.

⁶ AS 43.23.011(b), (c).

⁷ 15 AAC 23.133(d).

⁸ *Id.*

⁹ AS 43.23.095(2).

IV. Conclusion

Ms. B. was not disabled as defined by AS 43.23.095(2). The decision of the division to deny T. J. B.'s 2006 PFD application as untimely is AFFIRMED.

DATED this 11th day of June, 2009.

By: Signed
Rebecca L. Pauli
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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of July, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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