

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

In the Matter of)	
)	
D. Q.)	OAH No. 10-0446-PFD
)	Agency No. 2010-064-7440
<u>2010 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

D. Q. appeals the Permanent Fund Dividend Division's determination that he was ineligible for a 2010 permanent fund dividend (PFD) because he did not timely file an application. Mr. Q. requested a formal hearing by correspondence. The Notice of Hearing by Correspondence advised the parties that they had until October 8, 2010, to submit any additional documents or explanation that they would like to have considered in resolving their appeal. It also advised the parties that they had until October 19, 2010, to submit any written response to any material submitted by the other side. On September 23, 2010, Mr. Q. filed his position statement. On October 11, 2010, the division filed additional documents and its position statement. The record closed October 18, 2010 without further submission from either party. The division's denial is affirmed because the application was filed late and did not qualify for any exception to the deadline.

II. Facts

Mr. Q. has filed for and has received, with the exception of 2010, a PFD every year since 2005. From 2006 through 2009 he filed online.¹ Mr. Q.'s application for a 2010 PFD was denied because it was not received or postmarked on or before the March 31, 2010 filing deadline. Mr. Q. admits that he signed and dated his 2010 PFD application April 2, 2010.² He also admits that it was not timely filed. Mr. Q. is asking that his application be granted because he asserts he was unaware that the division was not sending notices through the mail reminding residents to file. In his position statement received September 27, 2010, he emphasized that he does not have cable television or read the paper and was unaware of the deadline.

¹ Exhibit 1 at 3.

² Exhibit 1 at 1.

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. Mr. Q. does not dispute that his application was filed late. Rather, he argues that the late filing should be excused because he was not notified that the filing deadline was approaching.

This argument is without merit. It is the division's obligation to "prescribe and furnish an application form for claiming" a dividend.³ The division fulfills its obligation by making applications available to the public at designated distribution centers as well as on line. "It is an individual's responsibility to ensure that an application is timely delivered to the department."⁴ Mr. Q. has successfully applied for and received a PFD in the past. For him to claim he was unaware that the filing period was upon him is difficult to fathom.

The statutes and regulations governing the PFD program provide very narrow exceptions 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.⁵ Mr. Q. has not claimed he that in 2010 he was a member of the armed forces.

There is an additional exception found 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.⁶ 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 period⁷

“‘[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....”⁸ Mr. Q. is not claiming he was disabled on March 31, 2010.

³ AS 43.23.015(b).

⁴ 15 AAC 23.103(g).

⁵ AS 43.23.011(b), (c).

⁶ 15 AAC 23.133(d).

⁷ *Id.*

⁸ AS 43.23.095(2).

Because it is undisputed that Mr. Q. filed his 2010 PFD application after the March 31, 2010 deadline and because he does not fit within an exception to the timely filing requirement, the division's denial of his 2010 PFD application should be affirmed.

IV. Conclusion

Mr. Q. did not timely file his 2010 PFD application. He does not meet the eligibility requirements to claim an exception to the March 31, 2010 filing deadline. Accordingly, the decision of the division to deny D. Q.'S 2010 PFD application as untimely is AFFIRMED.

DATED this 28th day of October, 2010.

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 26th day of November, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief ALJ
Title

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