

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

IN THE MATTER OF)	OAH No. 11-0239-PFD
T M. C)	Agency No. 2010-062-3496
)	
<u>2008, 2009 & 2010 Permanent Fund Dividends</u>)	

ORDER GRANTING MOTION TO DISMISS

I. Introduction

T M. C filed an incomplete application for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) determined that Mr. C was not eligible, and it denied the application. On the form that Mr. C filed to request an informal appeal, Mr. C indicated that he also wished to appeal the denials of his 2008 and 2009 PFDs. The division then issued an informal appeal decision denying Mr. C’s request because it was not timely filed and the division determined that he did not show reasonable cause for missing the deadline. Mr. C filed a request for a formal hearing. The division moved to dismiss the case.

Mr. C did not appear at the hearing on his appeal that was scheduled for July 19, 2011 or call in for the hearing as directed by the notice sent to him. The division then filed a request asking that its motion to dismiss be granted. The administrative law judge grants the motion.

II. Facts

Mr. C filed a request for an informal appeal regarding his claim for 2008, 2009 and 2010 PFDs on February 22, 2011.

Mr. C’s 2008 PFD was denied. His administrative appeal rights for the denial of his 2008 PFD application expired on January 1, 2009. Mr. C never applied for a 2009 PFD.

Mr. C’s application for a 2010 PFD was denied because he did not submit a completed supplemental schedule with his 2010 PFD application as directed by the instructions on his application, and he then did not timely provide a completed supplemental schedule as directed in a letter sent to him by the division when it discovered that his 2010 PFD application was incomplete.¹

The notice of denial for his 2010 PFD application informed Mr. C that he had 30 days from the date of the decision to file a request for an informal appeal. Enclosed with the notice of denial was a form to request an informal appeal, which also explicitly provided notice that the deadline to

¹ Ex. 1-5 & division’s motion.

return the form was December 26 2010. Mr. C's request for an informal appeal, filed on February 22, 2011, was sent almost two months after that deadline.²

In that late request for an informal appeal Mr. C indicated that he had failed to apply for a 2009 PFD and to respond timely to the division due to problems having his mail forwarded and miscommunications with his father about whether a 2009 PFD application was filed on his behalf. Mr. C asserted that he had lived in Alaska since 1985.³

Mr. C provided a 2010 PFD supplemental schedule with his late request for an informal appeal. This supplemental schedule was filled out, but did not include the supporting documentation required by the instructions on the form. For example, Mr. C failed to provide the required documentation of Alaska employment, or documentation showing that he had lived in Alaska during the periods that he claimed. Mr. C merely wrote "various" in spaces provided for setting out the dates that he rented housing in Alaska and wrote "self employed" in the area where he was suppose to put dates of employment in Alaska since 1985.⁴

The division issued an informal appeal decision, which upheld the denial of Mr. C's 2010 PFD, based on the division's determination that Mr. C did not show reasonable cause for missing the appeal deadline.⁵

In his formal hearing request, Mr. C asserted that his late appeals, late responses, and failure to apply in 2008 were due to postage issues, improper addressing, and other extenuation circumstances. Mr. C argues that he was qualified for the 2008, 2009 and 2010 PFDs because he has maintained residency in Alaska. Mr. C did not assert that he suffered from any disability that caused his late appeals.⁶

At time set for the hearing, Mr. C did not call in or appear. Mr. C did not request that the hearing be rescheduled.

III. Discussion

A person who wishes to appeal the denial of a permanent fund dividend must file a request for an informal appeal within thirty days of the day the division issues the informal appeal

² Exhibit 4.

³ Exhibit 4, page 3.

⁴ There is a 2011 report from the Alaska Department of Labor, at Exhibit 7, page 1, which shows only sporadic employment for Mr. C in Alaska in 2005, 2006 and 2007, with most of the reported earnings concentrated in the 2nd and 3rd quarters, which indicates mostly summer seasonal work in Alaska, all prior to 2008, the year Mr. C began to have trouble establishing his PFD eligibility.

⁵ Exhibit 5.

⁶ Exhibit 6.

decision.⁷ This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.⁸

Mr. C's request for an informal appeal was not filed until almost two months after the passing of the 30-day deadline for his 2010 PFD. Mr. C did not provide a reasonable excuse for the delay or persuasive evidence he is eligible for 2008, 2009 or 2010 PFDs. His half-hearted, erratic and incomplete filing and response history and his failure to provide documentary evidence showing his continuous physical presence in Alaska, indicate that he may have been living outside Alaska for extended periods during these PFD qualifying years.

Mr. C did not timely file his new addresses with the Division. Mr. C did not provided the information needed to establish his eligibility by following the directions on the 2010 PFD application, by timely responding to the division's request for information, or by appearing for his formal hearing. Under these circumstances, there is no apparent injustice that would result from strict adherence to the normal appeal deadline for his 2010 PFD application.

Mr. C did not even file a 2009 PFD application. He is therefore ineligible for a 2009 PFD.⁹ There is no 2009 PFD application denial to be appealed to an informal appeal, let alone a formal hearing, and Mr. C did not appear at the hearing on the motion to dismiss.

Mr. C did not request an informal appeal for his 2008 until his late appeal for an informal appeal to appeal the denial of his 2010 PFD application on February 22, 2011, more than two years after the deadline for that appeal. As Mr. C did not provided reasonable cause to excuse this late appeal it was also correctly denied by the division. Mr. C also did not show that an injustice would result from strict adherence to the normal appeal deadline for his 2008 PFD application.

IV. Conclusion

Mr. C did not request an informal appeal to appeal the denial of his applications for his 2008 and 2010 permanent fund dividends within the appeal period established by law. Normal application of the appeal deadline will not work an injustice in this case. Mr. C did not file a 2009 PFD application; there was therefore no application denial to appeal. The division's motion to dismiss the appeals should be granted.

⁷ 15 AAC 05.010(b)(5).

⁸ 15 AAC 05.030(k).\

⁹ Alaska Statute 43.23.005(a)(1).

V. Order

IT IS HEREBY ORDERED that the motion of the Permanent Fund Dividend Division to dismiss this case be GRANTED, and that no further proceedings be scheduled in this matter. The division's denial of Mr. C's appeal, requesting 2008, 2009 and 2010 permanent fund dividends will stand.

DATED this 25th day of July, 2011.

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

DATED this 25th day of August, 2011.

By: Signed _____
Signature
Mark T. Handley _____
Name
Administrative Law Judge _____
Title

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