

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

IN THE MATTER OF)	OAH No. 11-0246-PFD
B D. C)	Agency No. 2010-062-3497
)	
<u>2008, 2009 & 2010 Permanent Fund Dividends</u>)	

DECISION AND ORDER

I. Introduction

B D. C filed an application for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) determined that Mr. C was not eligible, and then denied the application. Mr. C filed a request for an informal appeal. The division then issued an informal appeal decision upholding its decision to denying Mr. C’s 2010 PFD. Mr. C filed a request for a formal hearing to appeal the denial of his and his adult son’s, T C’s 2008, through 2010 PFDs. The division’s denials of Mr. C’s son’s 2008 through 2010 PFD’s were upheld after a formal hearing at which neither Mr. C or his son appeared.

Mr. C requested that his formal hearing be held by correspondence. Administrative Law Judge Mark T. Handley heard the appeal. PFD specialist Bethany Chase represented the division and filed a position paper. Mr. C did not file a response to the Division’s position paper. The record in this appeal was scheduled to close on August 15, 2011. Before the record closed, the division provided notice that Mr. C had written to the Governor’s Office and the division regarding his PFD eligibility. An order was issued on August 9, 2011. That order gave Mr. C until August 15, 2011 to file a copy of this letter if he wished it to be included in the record for his formal hearing. On August 18, 2011, Mr. C filed a copy of his letter dated August 4, 2011.

Because Mr. C did not meet his burden of proof to show that the Division had incorrectly denied his claim for 2008, 2009, and 2010 PFDs. The administrative law judge finds that the denial of those PFDs should be upheld.

II. Facts

Mr. C filed a request for a formal hearing regarding his claim for 2008, 2009 and 2010 PFDs. Mr. C’s 2008 PFD was denied because it was filed on September 15, 2008, which is several months after the March 31, 2008 filing deadline. The division has no record of Mr. C having filed an application for a 2009 PFD.

Mr. C's application for a 2010 PFD was denied because he did not correctly complete the supplemental schedule with his 2010 PFD application as directed by the instructions on his application, and he then did not timely provide adequate information about his 2009 absence from Alaska as directed by the division.¹

Mr. C provided a 2010 PFD application on which he admitted that he had been absent more than 180 days in 2009. On his 2010 PFD application, Mr. C indicated that he was absent for employment as the reason for his absence, but he failed to provide the required dates of his absence from Alaska during 2009.² The division directed Mr. C to correctly complete another Adult Supplemental Schedule form providing the dates of his 2009 absence and also file a 2010 Prior Year Nonfiler since he had not applied for a 2009 PFD.³ Mr. C informed the division that he would not comply with this request for information because he believed that his application would be denied and did not see much point in wasting any more time and money filling out forms and mailing things.⁴

Mr. C's application was denied based on his failure to timely provide the requested information. Throughout the appeals process Mr. C continually failed to provide information requested by the division. At one point he indicated that he was absent in 2009 to care for his mother instead of for employment, but he failed to provide the information the division requested in order to determine if this absence was not disqualifying despite exceeding 180 days.⁵

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 denial.⁶ This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.⁷

Mr. C's did not file a timely request for an informal appeal for his 2008 PFD. Mr. C did not provide a reasonable excuse for his failure to meet the appeal deadline or persuasive evidence he is eligible for 2008, 2009 or 2010 PFDs. Mr. C's failure to timely file a 2008 PFD application, his failure to file a 2009 PFD application, his evasive responses on his 2010 PFD application and to the

¹ Exhibits 1- 9.

² Exhibit. 1.

³ Exhibit 2.

⁴ Exhibit 2, page 2.

⁵ Exhibit 3.

⁶ 15 AAC 05.010(b)(5).

division's requests for information about his absences from Alaska, as well as his failure to provide documentary evidence showing his continuous physical presence in Alaska in 2009, indicate that he may have been living outside Alaska for extended periods during these PFD qualifying years.

Mr. C did not provided the information needed to establish his eligibility by following the directions on the 2010 PFD application, or by timely responding to the division's request for information. The evidence in the record shows that it is more likely than not that Mr. C was on a disqualifying absence in 2009, the 2010 PFD qualifying year. In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the allowable reasons listed in AS 43.23.008.⁸ An absence of more than 180 days for employment is disqualifying.⁹ Mr. C's absence in 2009 exceeded 180 days and he did not show that his absence was for one of the specific reasons listed in AS 43.23.008.

Mr. C did not even file a 2009 PFD application. He is therefore ineligible for a 2009 PFD.¹⁰ There is no 2009 PFD application denial to be appealed to an informal appeal, let alone a formal hearing.

Mr. C did not timely request an informal appeal for his 2008 until his late appeal for an informal appeal to appeal the denial of his 2010 PFD application. Furthermore, Mr. C is clearly not eligible for a 2008 PFD because his application was filed late. Mr. C argued that the division failed to provide him with a PFD application. It is each individual's responsibility to make sure that his application is delivered to the division by the March 31 deadline.¹¹

IV. Conclusion

Mr. C did not request an informal appeal to appeal the denial of his application for his 2008 PFD. Mr. C appears to believe that he has been treated unfairly by the division, but Mr. C failed to meet his burden of proof to show that he is eligible for 2008, 2009 and 2010 permanent fund dividends. Despite the many opportunities Mr. C has been given to provide evidence of eligibility, the preponderance of evidence in the record shows is not eligible for a 2010 PFD due to a disqualifying absence. Mr. C is disqualified from 2008 and 2009 PFDs because he failed to timely

⁷ 15 AAC 05.030(k).

⁸ Alaska Statute 43.23.008

⁹ Alaska Statute 43.23.005(a)(6).

¹⁰ Alaska Statute 43.23.005(a)(1).

¹¹ Alaska Regulation 15 AAC 23.103(a).

file an application. Therefore, the division's denial of Mr. C's request for 2008, 2009 and 2010 permanent fund dividends will stand.

DATED this 7th day of November, 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 5th day of December, 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.]