

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

In the Matter of :)	
)	
G M. H)	
)	DOR No. 2010-048-8388
<u>2010 Alaska Permanent Fund dividend</u>)	OAH No. 11-0304-PFD

DECISION ON MOTION TO DISMISS

I. Introduction

G M. H filed an untimely appeal from the denial of her application for the 2010 Alaska Permanent Fund dividend. The matter was scheduled for a hearing by correspondence. The Permanent Fund Dividend Division filed a motion to dismiss the appeal. Ms. H did not submit a response to the motion within the time permitted, and the motion is therefore ripe for decision.

Because Ms. H has not shown that extension of the time for filing an appeal is necessary in order to avoid an injustice, the division’s motion is granted, and this case is dismissed.

II. Facts

G H was living and working in Alaska in August, 2009, when she decided to attend a nursing program at No Name College in Wichita Falls, Texas.¹ She applied to the program on August 31, 2009,² and on November 3, 2009, she flew to Wichita Falls.³ Ms. H first enrolled in the nursing program as a full-time, non-resident student on January 11, 2010.⁴

Ms. H submitted an online application for the 2010 Alaska Permanent Fund dividend on March 15, 2010, while in Texas.⁵ She provided a mailing address at a post office box in Anchorage, and a physical address also in Anchorage.⁶ She answered “yes” to a question asking if she was in Alaska on the date the application was filed.⁷

On May 3, 2010, the division wrote to Ms. H and requested additional information and documentation, sending the letter to the mailing address Ms. H had provided with her

¹ See Ex. 6, pp. 3, 5, 8-10; Ex. 8, p. 1.
² Ex. 10, p. 1.
³ Ex. 6, p. 6.
⁴ Ex. 10, pp. 2-3.
⁵ See Ex. 1 , p. 1, Ex. 4, p. 1.
⁶ Ex. 1, p. 1.
⁷ Ex. 1, p. 1.

application.⁸ Unknown to Ms. H, the mail box had been closed.⁹ In the absence of a forwarding address, the division's letter was returned on May 8, 2010.¹⁰ On June 24, 2010, the division denied Ms. H' application and sent notice of the denial to the same post office box.¹¹ Still lacking any forwarding address, the letter was returned to the division on June 29.¹²

The deadline for filing an appeal of the denial was July 24, 30 days after the date of the notice of denial.¹³ Because Ms. H was unaware that her application had been denied, she failed to file a timely appeal. Ms. H learned that the application had been denied on September 23, 2010, when she called the division to inquire as to why she had not received a dividend.¹⁴ At that time, she informed the division that the mailing and physical addresses she had provided were correct.¹⁵ The division resent a denial letter to that address in response to Ms. H' call,¹⁶ but once again Ms. H did not receive it.¹⁷ Ms. H called the division again on December 13, 2010, to request that another copy of the denial letter be sent to her, once again confirming that the address on her application was correct.¹⁸

On March 31, 2011, Ms. H called the division, stating that she had received a copy of the denial letter, but that she had not received a copy of the form for requesting an appeal.¹⁹ Because that form is not readily available online, Ms. H asked that a copy of that document be mailed to her.²⁰ On this occasion, she provided a Texas mailing address.²¹ The division mailed the appeal form to that address, and on April 11, 2011, Ms. H mailed the form and instituted this appeal.²²

⁸ Ex. 3, p. 1.

⁹ Ex. 8, p. 3.

¹⁰ Ex. 3, p. 2.

¹¹ Ex. 5.

¹² Ex. 5, p. 6.

¹³ Ex. 5, p. 2. *See* 15 AAC 05.010(b)(5).

¹⁴ Ex. 6, p. 3; Ex. 11.

¹⁵ Ex. 11. Ms. H explains that "due to negative personal circumstances happening...in Texas I had made plans to come back to Alaska. So at that time my p.o. box was my correct mailing address." Ex. 8, p. 3.

¹⁶ Ex. 11.

¹⁷ Ex. 6, p. 3. Whether this letter was returned to the division is unknown. The division did not submit evidence that it was returned.

¹⁸ Ex. 11 ("Mailed to address on the application. Verified address with the applicant.").

¹⁹ Ex. 11. Ms. H states that this letter was sent to her in Texas. Ex. 8, p. 3. However, as noted previously, the evidence is that the December letter was sent to the address on her application. It may be that by this time, Ms. H had provided a forwarding address to the post office in Anchorage.

²⁰ Ex. 8, p. 3.

²¹ Ex. 11.

²² Ex. 8, p. 3.

III. Discussion

An appeal from the denial of an application for a permanent fund dividend must be filed within thirty days of the date of denial.²³ The administrative law judge may extend the time for filing an appeal when “strict adherence to the deadline...would work an injustice.”²⁴

Whether dismissal based on an untimely appeal will work an injustice depends on the two factors: the individual’s apparent eligibility, and the reasons for delay in filing the appeal. Where the undisputed evidence establishes that an individual is ineligible there is no injustice in dismissing an untimely appeal based on a procedural technicality. By contrast, where the evidence is inconclusive, but indicates that an individual may be eligible, dismissal of an untimely appeal may work an injustice, depending on the circumstances.²⁵ The relevant circumstances include, but are not limited to, the reasons for the delay and the length of the delay.²⁶ Another factor to consider is whether the division’s conduct, or the applicant’s, is primarily responsible for the delay.²⁷ The appeal deadline serves an important purpose, and waivers are not granted for insubstantial reasons.²⁸

A. Apparent Eligibility

In this case, the evidence regarding Ms. H’s eligibility is not entirely undisputed. The stated grounds for denial included: (1) Ms. H had intentionally provided false information to the division;²⁹ (2) Ms. H had failed to provide requested information within 30 days;³⁰ (3) Ms. H had been absent during the qualifying year for a disqualifying reason;³¹ and (4) Ms. H had not remained a resident throughout the qualifying period.³²

²³ 15 AAC 05.010(b)(5).

²⁴ 15 AAC 05.030(k).

²⁵ See, e.g., In Re J.M.Y., OAH No. 07-0282-PFD at 2 (Commissioner of Revenue 2007).

²⁶ Cf. In Re A.B.H., OAH No. 07-0655-CSS at 2 (Commissioner of Revenue 2007); In Re L.A., OAH No. 06-0610-CSS at 3 (Commissioner of Revenue 2006).

²⁷ See, e.g., In Re J.A.C., Jr., OAH No. 06-0742-PFD (Commissioner of Revenue 2007) (review of cases, concluding: “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.”).

²⁸ See, e.g., In Re D.S. at 4, 5, OAH No. 09-0033-PFD (Commissioner of Revenue 2009) (historically, waivers granted for “particularly compelling circumstances”; deadline’s “important purpose” is to “prevent...the unlimited revisiting of decisions long in the past”); In Re S.R. at 2, OAH No. 08-0561-PFD (Commissioner of Revenue 2008) (as result of lengthy delay, in that case “information needed to evaluate eligibility will now be stale and difficult to obtain”).

²⁹ Ex. 5, p. 2. See 15 AAC 23.103(j) (authorizing denial for intentionally providing deceptive information). The division asserted that Ms. H had provided an incorrect mailing address and that she had failed to disclose a reportable absence. Ex. 5, pp. 1, 2.

³⁰ Ex. 5, p. 1. See 15 AAC 23.173(d) (authorizing denial for failure to timely provide requested information)..

³¹ Ex. 5, p. 2. See AS 43.23.008(a).

³² Ex. 5, p. 2. See AS 43.23.005(a)(2), (3).

Of these four grounds, undisputed evidence indicates that two are inapplicable. First, although the failure to provide requested information within 30 days is grounds for an initial denial, if the requested information is timely provided on appeal, the evidence is considered and the failure to provide it earlier is disregarded.³³ Second, there is nothing in the record on appeal to show that Ms. H was unallowably absent during the qualifying year.

With respect to one other ground, namely Ms. H' residency, the evidence on appeal is inconclusive and mixed. Undisputed evidence shows that Ms. H was absent while attending school, and that she paid non-resident tuition for at least the first semester.³⁴ However, payment of non-resident tuition at an out-of-state school is typically required until the student has spent a sufficient period of time in the state to qualify for in-state tuition, and since Ms. H had been in Texas for less than six months when she enrolled, the fact that she paid non-resident tuition initially is not in itself evidence of an intent to maintain Alaska residency. Moreover, whether she paid resident or non-resident tuition after that time is unknown. With respect to her subjective intent to return to Alaska, there is no evidence in the record one way or the other, except for Ms. H' self-serving assertion that she plans to return.

As to the final asserted ground for denial the evidence is not undisputed, but the record provides ample support for a finding that Ms. H intentionally provided deceptive information. First, there are two instances of indisputably false information in the initial application: (1) her physical address at the time she applied was in Texas; (2) she was not physically in Alaska at the time she applied. Ms. H offers no explanation for these lapses other than mental error. In addition, the division's contemporaneous notes regarding Ms. H' subsequent contacts indicate that she subsequently mis-stated the facts on several occasions: (1) in September, she stated that she had filed her application while on vacation, when in fact she was attending school in Texas; (2) in September and December, 2010, she called the division and confirmed her Alaska address, even though she had been living in Texas since November, 2009, and at the time of both calls she was attending school there. Ms. H's explanations for her alleged misstatements on those occasions are unpersuasive.³⁵

³³ See 15 AAC 23.173(c).

³⁴ Ex. 10, p. 3.

³⁵ Ms. H states that she doesn't remember saying that she was on vacation when she applied, and she indicates that she had second thoughts about remaining in Texas after she arrived there. As to the first point, the division's contemporaneous notes are more persuasive than her self-serving recollections; as to the second, at the

B. Reasons For And Length Of Delay

Ms. H did not file a timely appeal because she did not receive the notice of denial. However, the notice of denial had been sent to the address stated in her application. Ms. H argues that she had relied on another individual to pick up her mail, and that because that individual failed to do so, her failure to file a timely appeal should be excused. But at the time she applied, Ms. H was already living in Texas, and by not providing a Texas mailing address when she applied, Ms. H assumed the risk that the person she had designated to monitor her mail in Alaska would fail to do so. More importantly, the division's records indicate that when she contacted the division in September, Ms. H failed to update or change the mailing address previously provided, even though the prior denial letter previously sent to that address had been returned. Ms. H may not have realized at that time that her post office box had been closed,³⁶ but she knew that the denial letter sent to her post office box had not reached her, and she had for more than ten months been living in Texas while attending school. While the failure to file an appeal prior to her initial call in September might be excused, the lengthy delay after that time is not. The preponderance of the evidence is that Ms. H did not inform the division of her Texas mailing address until March 31, 2011, long after the time for filing an appeal had expired, six months after she first contacted the division in September, and three months after her subsequent contact with the division in December, and that she repeatedly provided an Alaska post office box as a mailing address at a time when she was living in Texas. Under these circumstances, her lengthy delay in filing an appeal due to non-receipt of the denial letter is not excused.

IV. Conclusion

Although there is a reasonable ground for dispute as to Ms. H' eligibility, she has not shown good cause for her failure to file a timely appeal. Under these circumstances, she has not

time she spoke to the division, she was enrolled and attending school, and she failed to mention that fact to the division.

³⁶ Ms. H has not clearly stated when she learned that the post office box had been closed. She states: "It was only after I called the pfd office I was made aware that my box was in fact closed." Ex. 8, p. 3. Ms. H first called the division on September 23, 2010. Based on her statement, it appears she first learned that the post office box had been closed at some time after that call.

shown that strict adherence to the time limit for filing an appeal will work an injustice. The division's motion to dismiss her appeal as untimely is therefore GRANTED.

DATED December 1, 2011

Signed

Andrew M. Hemenway
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 30th day of December, 2011.

By: Signed

Signature
Andrew M. Hemenway

Name
Administrative Law Judge

Title

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