

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

In the Matter of:)	
)	
K C, and W)	
R, B R)	OAH No. 11-0372-PFD
& K M)	Agency Nos. 2011-029-9965,
(minor children))	2011-029-9990, 2011-030-0002,
)	2011-030-0019
<u>2011 Permanent Fund Dividend</u>)	

DECISION

I. INTRODUCTION

K C applied for a 2011 Permanent Fund Dividend (PFD) for herself and on behalf of her three children.¹ The Permanent Fund Dividend Division (Division) denied her application because she was out of state when she applied and had marked “no” to the question of whether she intended to return to Alaska. In addition, the Division found that she had maintained a principal home outside of Alaska.² The applications on behalf of each child were denied because the children did not have an eligible sponsor.³

Ms. C has appealed these denials. A formal hearing was held by telephone on November 4, 2011. Ms. C represented herself. The Division was represented by PFD Specialist Peter Scott. After the hearing, the record was left open until November 9, 2011, to allow the Division time to submit additional information from the Department of Corrections.⁴ That information was not submitted, but different information was provided.⁵

Because Ms. C’s appeals were not timely, the Division’s Motion to Dismiss is granted.

¹ Exhibit 1.

² Exhibit 3, page 1.

³ Exhibit 3, pages 10 – 14.

⁴ The father of Ms. C’s son had been incarcerated, which prompted her need to leave Alaska for a period of time during 2010. The Division asked for time to obtain information concerning the dates of the father’s incarceration.

⁵ The document submitted by the Division raised a new issue that Ms. C had not been given an opportunity to address during the hearing. It would be unfair to consider this document now without holding a supplemental hearing or giving Ms. C some opportunity to respond.

II. FACTS

Ms. C has been a resident of Alaska, and was living in Anchorage with Mr. M, the father of her youngest son, during 2010.⁶ Mr. M was arrested and incarcerated. Because she no longer had his support, Ms. C traveled to California with her children to stay with family. She continued to receive mail in Anchorage, and had people forward it to her at a post office box she established in California. She and her family stayed with family or friends at different places within California, and she was not always near the town where her mail was being sent.

Ms. C's informal appeal was due on or before June 19, 2011, but was postmarked July 13, 2011.⁷ Thus her informal appeal was nearly one month late. In addition, her formal appeal was due on September 3, 2011, and was not postmarked until September 8, 2011.⁸

III. DISCUSSION

The Division moved to dismiss Ms. C's appeal because her request for an informal appeal was late. A request for an informal appeal must be filed within 30 days after notice that the PFD has been denied unless "the individual demonstrates a reasonable cause for the failure to file within this period[. ⁹]" Even if the applicant has not demonstrated reasonable cause, a hearing officer may still waive this deadline if adherence to the deadline would "work an injustice[. ¹⁰]"

The length of the delay is one factor that is considered when deciding whether strict adherence to the filing deadlines would work an injustice.¹¹ Standing alone, either one of the late filings might be excused given the disruption to Ms. C's life from her temporary move to California on short notice, and not having a permanent place to live while in California. Under all the circumstances of this case, however, strict adherence to the filing deadlines would not be unjust.

Ms. C called the Division on May 23, 2011.¹² She testified that she was told then that her applications had been denied. Even though she was not able to check her post office box

⁶ Unless otherwise noted, the factual findings are based on Ms. C's testimony.

⁷ Exhibit 4, page 1.

⁸ Exhibit 6.

⁹ 15 AAC 05.010(b)(5).

¹⁰ 15 AAC 05.030(k).

¹¹ See, *In re S.O.*, OAH No. 09-0497-PFD (Commissioner of Revenue 2010), page 2 *In re J.J.G.*, OAH No. 09-0363-PFD (Commissioner of Revenue 2009), page 4.

¹² Exhibit 1, page 6.

regularly, she continued to have mail from the Division sent to her Anchorage address. Her mail then forwarded to California. This process caused some unnecessary delay.¹³

When Ms. C's informal appeal was denied, she was informed that it had been denied because it was filed late.¹⁴ She was specifically told in that denial that any further appeal must be postmarked within 30 days.¹⁵ Ms. C was able to complete and sign the request for a formal hearing on September 2, 2011,¹⁶ which was one day before the appeal deadline. It was not actually postmarked until September 8, 2011.¹⁷

By August of 2011, Ms. C knew the importance of filing a timely appeal. Her request for an informal appeal was late partly because of the method she set up for receiving mail. There has been no explanation for why her request for a formal hearing was not timely. Under these circumstances, it would not work an injustice to strictly adhere to the filing deadlines.

IV. CONCLUSION

Ms. C's informal appeal and request for a formal hearing were both filed after the filing deadline. Accordingly, the Division's Motion to Dismiss is GRANTED. The Division's decision to deny a PFD to Ms. C and to each of her children will not be reviewed or overturned.¹⁸

Dated this 1st day of December, 2011.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹³ See 15 AAC 23.103(c) (applicants are required to provide a current address before PFD is paid and during any appeal process).

¹⁴ Exhibit 5.

¹⁵ Exhibit 5, page 2. The form for requesting a formal hearing also had the deadline prominently marked at the top of the form.

¹⁶ Exhibit 6, page 1.

¹⁷ Exhibit 6, page 3.

¹⁸ The children's applications were denied because they did not have an eligible sponsor. Upon reaching the age of majority, or being emancipated, each child may wish to consider applying for a prior year dividend pursuant to 15 AAC 23.133(b) & (c).

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 3rd day of January, 2012.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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