

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

IN THE MATTER OF)	OAH No. 12-0857-PFD
U O)	
)	Agency No. 2012-067-7529
<u>2012 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

This case is U O’s appeal of the denial of her late filed 2012 permanent fund dividend (PFD) application. Ms. O argued that her late filing should be excused because she mailed her PFD application before the application deadline, and simply failed to put any postage on the envelope.

The Permanent Fund Dividend Division (Division) determined that Ms. O was not eligible, and it denied the application initially and at the informal appeal level. Ms. O requested a formal hearing. The hearing was held on December 9, 2012.

Ms. O participated for her hearing by phone. Administrative Law Judge Mark T. Handley heard the appeal. The record closed at the end of the hearing. The administrative law judge finds the Division correctly denied Ms. O’s 2012 PFD application because the Division is not allowed to accept a late filed PFD application, a mailed application that is not postmarked until after the deadline is late unless there was an error by the postal service. In this case the postal service followed the correct procedure by sending the PFD application back to Ms. O without putting a postmark on the unstamped envelope

II. Facts

At the hearing, Ms. O explained first tried to apply for a 2012 PFD application on-line, but she was unsuccessful in her attempts to file this way. Ms. O then filed out a paper 2012 PFD application. Ms. O dated her signature on this re-application March 30, 2012.¹ Ms. O explained she did not take her application to the post office. Instead, Ms. O mailed it on the day that she signed it from a local mailbox. Ms. O explained that she assumed that the envelope did not require postage. The post office sent her 2012 PFD application back to stamped “Returned to Sender for postage. . .” Ms. O put a stamp on the envelope and re-mailed it after it was returned. There is no postmark date before the deadline on the envelope, and it is stamped with June 5, 2012 as the date

¹ Exhibit 1 page 1.

that it was received by the Division.² Ms. O thought that postal service should have either delivered it without postage to the Division or returned it to her sooner.

The Division provided a letter from the postal service in Juneau addressing that procedure that would have been followed with Ms. O's 2012 PFD application after having reviewed the postal marks on the envelope. The letter explains that the postal service only postmarks an envelope if it has some postage on it. The postal marks indicate that the envelope was mailed with no postage and returned to the sender.³

III. Discussion

For each dividend year, there is a three-month application period that starts on January 1, and ends on March 31 of the relevant year.⁴ The applicant has the responsibility of ensuring that her application is postmarked or received by this deadline.⁵

The laws regarding permanent fund dividends do not allow the Division to make exceptions to the rules regarding filing of applications, even in particularly compelling cases. There are only two types of exceptions for the strict requirement that PFD applications be filed within the application period. The first is the exception is for Alaskans who are disabled due to a medical condition.⁶ This exception does not apply to this case. The second is for active duty military personnel, but this exception is limited to those in hostile fire or imminent danger pay status during the application period, which also does not apply to Ms. O.⁷

Rules for filing PFD applications are found in Alaska Regulation 15 AAC 23.103. Subsection (a) of this regulation reads in part, "an application must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." Subsection (g) of the regulation reads:

It is an individual's responsibility to ensure that an application is timely delivered to the department during normal business hours or is delivered to the post office in sufficient time to be postmarked before the end of the application period. The department will deny an application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service that describes the specific circumstances under which it incorrectly posted the individual's application or caused a delay in posting.

² Exhibit 1, page 5.

³ Exhibit. 7.

⁴ Alaska Statute 43.230011(b) & (c).

⁵ Alaska Regulation 15 AAC 23.103(g).

⁶ See Alaska Regulation 15 AAC 23.133(d).

⁷ Alaska Statute 43.230011(a)

Ms. O did not meet the timely filing requirements of 15 AAC 23.103. Her application was mailed rather than filed electronically or delivered to the Division before the deadline. Ms. O's application was postmarked after the deadline. Ms. O did not provide a letter from the postal service explaining that the postal service did not properly process the application. Instead, the letter that was provided by the postal service at the Division's request indicates that based on the investigation of the postal service, Ms. O's PFD application was properly handled and postmarked by the postal service.

Unfortunately, the law governing late PFD applications is very strict and does not provide any exceptions that would allow the Division to accept Ms. O's 2012 PFD late filed application.

IV. Conclusion

IT IS HEREBY ORDERED that the application of U O for a 2012 permanent fund dividend be DENIED.

DATED this 4th day of February, 2013.

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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of March, 2013.

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

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