

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

IN THE MATTER OF)	OAH No. 13-0777-PFD
U C)	Agency No. 2012-067-7045
)	
<u>2012 Permanent Fund Dividend</u>)	

ORDER GRANTING MOTION TO DISMISS

I. Introduction

U C’s applied for a 2012 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) denied the application. Ms. C filed a late request for an informal appeal and the division upheld the denial of her 2012 PFD application in an informal appeal decision based on her late appeal. Ms. C then filed a timely request for a formal hearing. The hearing was held on July 24, 2013. Ms. C participated. PFD specialist Bethany Thorsteinson represented the division in person. The division moved to dismiss the case. The administrative law judge grants the motion.

II. Facts

Ms. C’s 2012 PFD application was denied because the division determined that Ms. C was not eligible because her 2012 PFD application was postmarked after the deadline.¹ The denial letter for her 2012 PFD was issued on June 15, 2012.² This denial letter and the appeal form provided notice that Ms. C had thirty days, or until July 15, 2012 to file a request for an informal appeal.³ Ms. C did not file a request for a formal hearing within thirty days. Ms. C’s request for an informal appeal was received on February 19, 2013.⁴ This means that Ms. C filed her request for an informal appeal almost seven months after the thirty day deadline. The division then issued an informal appeal decision denying the appeal because it was late.⁵

Ms. C filed her request for a formal hearing.⁶ At the hearing, Ms. C explained that she thought she should receive a 2012 PFD because she had mailed her 2012 PFD application well before the post office closed on the day of the application deadline. Ms. C explained that she gave her application to a postal employee she knew, who made a joking comment about her having

¹ Exhibits 1 & 2.
² Exhibit 2 page 1.
³ Exhibit 2, pages 1 & 3.
⁴ Exhibit 2 pages 1, 2 & 3.
⁵ Exhibit 4.
⁶ Exhibit 5.

waited until the last day.⁷ Prior to the hearing Ms. C provided a letter from D D. Mr. D was a clerk from the Fairbanks Post Office where Ms. C mailed her 2012 PFD application. In his letter, Mr. D recounted that on March 31, 2012, as he was collecting mail from the drop boxes prior to closing the office, one of his regular customers, Ms. C gave him her 2010 PFD application. Mr. D remembered chiding Ms. C for waiting until the last minute to mail her application, and he remembers assuring her that her application would be postmarked before the deadline.⁸

Mr. D also testified at the hearing. He explained that he is no longer working for the Post Office. Mr. D also testified that he does not know why Ms. C's PFD application was not postmarked on March 31, 2012. He explained that her application and all the other mail that he gathered from the drop boxes should have been postmarked with that day's date.⁹

At the hearing, Ms. C explained that she had not filed her request for an informal appeal before the deadline because she did think she would qualify for a PFD because she did not know how she get a letter from the Post Office explaining that the postmark was incorrect. Ms. C explained that she had filed her appeal after she ran into Mr. D and he told her that he remembered receiving her application.¹⁰

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 letter.¹¹ This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.¹²

Ms. C's request for an informal appeal was not filed until several months after the passing of the 30-day deadline. Ms. C's reason for missing the deadline does not excuse her filing her appeal several months late. Ms. C chose not to file a timely appeal based her assessment of what she would have to do to prove her case and her chances of prevailing. Ms. C did not try to find Mr. D to see if she remembered him and would write a letter before the appeal deadline. Instead, Ms. C chose to let the appeal deadline pass, and then later decided to file a late appeal several months later

⁷ Recording of Hearing-Testimony of Ms. C.

⁸ Exhibit 2 page 3.

⁹ Recording of Hearing- Testimony of Mr. D.

¹⁰ Recording of Hearing-Testimony of Ms. C.

¹¹ 15 AAC 05.010(b)(5).

¹² 15 AAC 05.030(k).

after she ran into Mr. D, and told him about the postmark on her PFD application. These are not circumstance that would create an injustice to enforce the appeal deadline. Alaskans who wish to appeal the denial of a PFD application must file an appeal before the deadline. If they need time to obtain documentation to support their appeals they can request more time after they have timely filed an appeal. Either the failure to file a timely appeal or the failure to make diligent efforts to obtain the evidence needed to support an appeal is grounds to dismiss an administrative appeal. Ms. C did not file a timely appeal and she did not show that she made diligent efforts to try to support her position that the Post Office mistakenly postmarked her 2012 PFD application after the deadline. There is no apparent injustice that would result from strict adherence to the normal appeal deadline.

It is unfortunate that Ms. C's 2012 PFD application was not postmarked the day that she mailed it. A PFD applicant has the responsibility of ensuring that her application is postmarked or received by the deadline.¹³ The only way to ensure that an application mailed on the day of the deadline will be timely filed is go to the counter of a post office and to ask that asked to see the envelope postmarked, or ask for a mailing receipt.

IV. Conclusion

Ms. C did not request an informal appeal to appeal the denial of her application for her 2012 permanent fund dividend within the appeal period established by law. Normal application of the appeal deadline will not work an injustice in this case. The division's motion to dismiss the appeal is granted. No further proceedings will be scheduled in this matter. The division's denial of Ms. C's application for a 2012 permanent fund dividend will stand.

DATED this 14th day of August, 2013.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

¹³ Alaska Regulation 15 AAC 23.103(g).

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 12th day of September, 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.]