

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

IN THE MATTER OF)	OAH No. 13-1426-PFD
K B)	Agency No. 2013-030-7046
)	
<u>2013 Permanent Fund Dividend</u>)	

ORDER GRANTING MOTION TO DISMISS

I. Introduction

K B applied for a 2013 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) denied the application. Mr. B filed a late request for an informal appeal; the division upheld the denial of his 2013 PFD application, in an informal appeal decision, based on his late appeal. Mr. B then filed a timely request for a formal hearing by correspondence. The hearing record closed on November 25, 2013. Mr. B did not file any additional documents. PFD specialist Peter Scott represented the division and filed a position paper. The division moved to dismiss the case. The administrative law judge grants the motion.

II. Facts

Mr. B’s 2013 PFD application was denied because the division determined that Mr. B was not eligible; he had moved to Texas before he filed his 2013 PFD application.¹ The denial letter for his 2013 PFD was issued on February 15, 2013.² This denial letter and the appeal form provided notice that Mr. B had thirty days, or until March 17, 2013, to file a request for an informal appeal.³ Mr. B did not file a request for a formal hearing within thirty days. Mr. B’s request for an informal appeal was postmarked on April 15, 2013.⁴ This means that Mr. B filed his request for an informal appeal about four weeks after the thirty-day deadline. The division then issued an informal appeal decision denying the appeal because it was late.⁵

Mr. B filed his request for a formal hearing.⁶ Mr. B explained that he had not received the denial letter until April 11, 2013. Mr. B explained that he had not provided his new address in Texas to the division because he left Alaska in a hurry: his wife had a medical emergency.⁷ Mr. B filed his 2013 PFD application electronically on February 2, 2013. On that application he admitted

¹ Exhibits 1 & 2.
² Exhibit 2, page 1.
³ Exhibit 2, page 1 & Exhibit 3, page 1.
⁴ Exhibit 3, page 6.
⁵ Exhibit 5.
⁶ Exhibit 6.
⁷ Exhibits 3 & 6.

that he was not in Alaska, had left Alaska on January 1, 2013, and did not have plans to return to Alaska because his children were in a special school. On that application he provided his former Anchorage, Alaska address as both his physical and mailing address instead of his new Texas address.⁸ At that time, by his own admissions on the application, Mr. B no longer lived at his former Anchorage, Alaska address and had no plans to move back. Before he left Alaska on January 1, 2013, Mr. B had moved all his household goods out of that address. Mr. B had listed this address for sale on December 26, 2012.⁹ Mr. B sold this home on February 20, 2013.¹⁰

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

Mr. B's request for an informal appeal was not filed until several weeks after the passing of the thirty-day deadline. Mr. B's reason for missing the deadline does not excuse his filing his appeal several weeks late. Mr. B chose not to provide his current mailing and physical address when he filed his 2013 PFD application on February 2, 2013. At that time he had been living in Texas for more than a month and had no plans to return to his former Alaska address. This was over a month after his wife's medical emergency. Because he did not provide his correct mailing address, as required, on his 2013 PFD application, he had to depend on the postal service to forward the denial letter sent by the division. Mr. B asserts that these circumstances resulted in his not receiving the denial letter until April 11, 2013. Even if he did not receive his denial letter until that date, he did not mail his appeal until April 15, 2013. These are not circumstances 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. PFD applicants are required to provide their current mailing address on the application, and are required to send a change of address to the division if their addresses change before the PFD is paid.¹³

⁸ Exhibit 1, page 5.

⁹ Exhibit 12, page 1.

¹⁰ Exhibit 4, page 5.

¹¹ Alaska Regulation 15 AAC 05.010(b)(5).

¹² Alaska Regulation 15 AAC 05.030(k).

¹³ Alaska Regulation 15 AAC 23.103(c).

Mr. B did not file a timely appeal because he did not provide his current mailing address on his application or provide the division with his mailing address before the denial letter was issued.

Furthermore, Mr. B is simply not eligible for a 2013 PFD because he was not an Alaska resident on the date he filed his 2013 PFD application. By that date he had moved to Texas, listed his former Alaska home for sale, and had no definite plans to move back to Alaska. To qualify for the 2013 PFD, an applicant must meet the eligibility requirements during all of 2012, the qualifying year for the 2013 PFD, and through the date of application. As applied to Mr. B's application, that means he must have been an Alaska resident through February 2, 2013, the date of his PFD application.¹⁴ To be an Alaska resident, one must not be absent under circumstances that are inconsistent with the intent required to remain a resident of Alaska during an absence.¹⁵ Mr. B was not an Alaska resident when he filed for his 2013 PFD application.

IV. Conclusion

Mr. B did not request an informal appeal to appeal the denial of his application for his 2013 permanent fund dividend within the appeal period established by law. Mr. B did not show that strict adherence to the appeal deadline he failed to meet would work an injustice. The division's motion to dismiss the appeal is granted. No further proceedings will be scheduled in this matter. The division's denial of Mr. B's application for a 2013 permanent fund dividend will stand.

DATED this 7th day of January, 2014.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁴ Alaska Statute AS 43.23.005(a).

¹⁵ AS 01.10.055(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 21st day of February, 2014.

By: Signed
Signature
Angela M. Rodell
Name
Commissioner
Title

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