

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

In the Matter of:)
)
 L S) OAH No. 14-0083-PFD
) Agency No. 2013-066-9751
_____)

DECISION

I. Introduction

The Department of Revenue, Permanent Fund Division (Division) received L S’s permanent fund dividend (PFD) application April 3, 2013. It was post-marked April 1, 2013, one day after the filing deadline. The Division denied Ms. S’s PFD application as untimely. Ms. S appealed. The Division, through its internal, informal appeal process, upheld its denial. Ms. S filed a request for formal appeal. A hearing was held on February 18, 2014.

The Division’s denial of Ms. S’s PFD application is affirmed because the application was not timely filed and Ms. S does not meet any exception to the timely filing requirement.

II. Facts

Ms. S’s PFD application was post marked April 1, 2013, one day after the March 31st deadline.¹ On May 24, 2013, the Division sent notice to Ms. S that her PFD application was denied.² Ms. S requested an informal appeal on June 21, 2013.³ On her request for informal appeal, Ms. S noted that she mailed her PFD application out March 29/30, that the application was in the mailbox before Sunday, and that she had been very ill.⁴ On October 9, 2013, the Division sent Ms. S a letter, asking her to have her health care provider fill out a Licensed Health Care Provider’s Certificate of Disability, if she believed she met the definition of disabled on March 31, 2013.⁵

On October 21, 2013, the Division received notice from No Name Family Medicine that Ms. S did not meet the PFD definition of “disabled” on March 31, 2013.⁶ On December 5, 2013, the Division sent notice upholding its denial.⁷ The Division received Ms. S’s formal appeal

¹ Exhibit 1.
² Exhibit 3.
³ Exhibit 4.
⁴ Exhibit 4.
⁵ Exhibit 5.
⁶ Exhibit 6.
⁷ Exhibit 7.

request on January 5, 2014.⁸

A hearing was held on February 18, 2014. Ms. S represented herself and the Division was represented by Bethany Thorsteinson.

At hearing, Ms. S testified that in February 2013 she gave both her and her son's completed PFD applications to her boyfriend at the time to mail. She testified credibly that the boyfriend was abusive and controlling. She eventually was able to rid herself of him. Ms. S stated that when she was removing her things from his vehicle, she found both her and her son's PFD applications. Ms. S stated this was on March 31, 2013, but later clarified that her son put the PFD applications into the outgoing mailbox at 2 p.m. on Saturday, March 30, 2013. Ms. S stated that because she and another neighbor had received no mail that day, she believed the mail had not been picked up for delivery at the time the applications were placed in the mailbox.

Ms. S also testified that she has been disabled for many years. She stated that the Certification of Disability form was confusing to her and her provider.

III. Discussion

Ms. S has the burden of proving, by a preponderance of the evidence, that the Division's decision to deny her application was incorrect.⁹

It was Ms. S's responsibility to ensure that her PFD application was timely delivered.¹⁰ The regulatory requirements are very strict. Ms. S's PFD application must have been postmarked, not just placed in the mail for delivery, by March 31, 2013.¹¹ It is the applicant's responsibility to ensure that an application is either timely delivered to the department or delivered to the post office in sufficient time to be postmarked or received by the deadline.¹² Ms. S assumed that her PFD application would be timely, but she did not ensure it, as required by the regulation.

There is an exception that permits late applications from individuals who were prevented from filing on time by a disability, as defined in the PFD statute.¹³ To qualify for that exception, the applicant must provide a certification from a licensed health care provider that includes:

⁸ Exhibit 8.

⁹ Alaska Administrative Code, 15 AAC 05.030(h).

¹⁰ 15 AAC 23.103(g).

¹¹ 15 AAC 23.103(a).

¹² 15 AAC 23.103(g).

¹³ 15 AAC 23.133(d).

- (1) confirmation that the individual was disabled on March 31 of the dividend year for which the individual is applying; and
- (2) a statement explaining why the disability prevented the applicant from timely filing an application during the application period¹⁴

“‘[D]isabled’ means physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic or other health impairment. . . .”¹⁵ Though Ms. S may meet other definitions of disabled, she does not meet this definition of “disabled.” The certification from her health care provider confirms this.¹⁶ There is no evidence to suggest that Ms. S was physically or mentally unable to complete and sign the application. On the contrary, Ms. S’s application was completed, just not postmarked, by the deadline.

IV. Conclusion

The Division’s decision to deny Ms. S’s 2013 PFD application is affirmed.

DATED: June 21, 2016 Signed _____
Bride Seifert
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 3rd day of June, 2014.

By: Signed _____
Signature
Bride A. Seifert
Name
Administrative Law Judge _____
Title

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

¹⁴ 15 AAC 23.133(d).
¹⁵ Alaska Statute 43.23.095.
¹⁶ Exhibit 6.