

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

In the Matter of	)	
	)	
V D	)	
	)	OAH No. 14-0943-PFD
<u>2013 Permanent Fund Dividend</u>	)	Agency No. 2013-045-0037

**DECISION**

**I. Introduction**

After V D timely applied for a 2013 Permanent Fund Dividend (PFD), the Permanent Fund Dividend Division denied her application on the basis that she maintained her principal home outside Alaska. Five months later, Ms. D initiated the appeal process. The division rejected the appeal as untimely. Ms. D requested a formal hearing by correspondence. The division moved to dismiss on the basis of untimeliness. The division’s motion is granted because Ms. D did indeed miss the deadline to appeal, and she has not shown reasonable cause for doing so.

**II. Facts**

The facts in this case are entirely undisputed. Ms. D has lived in Alaska off and on since 2004, with her most recent residency starting in 2010. Her parents, however, have left the state (they are a military family, moving from place to place). During 2012, the qualifying year for the 2013 dividend, Ms. D was a student at the University of Alaska, residing on campus for most of the year.<sup>1</sup>

Regrettably, when she filled out her 2013 PFD application, Ms. D gave her parents’ address at a military installation in Georgia as her “principal home address.”<sup>2</sup> Since she did not claim to be in any of the categories that allow certain people to receive PFDs even though they are living at a principal home outside Alaska,<sup>3</sup> her dividend was routinely denied. On June 14, 2013, the division sent a denial notice to the mailing address Ms. D had given in her application.<sup>4</sup> The notice informed Ms. D that she had 30 days to initiate an appeal, and was sent with a form to use in requesting the appeal.<sup>5</sup> However, the denial notice was returned as undeliverable.<sup>6</sup>

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<sup>1</sup> Ex. 9, p. 5.  
<sup>2</sup> Ex. 1, p.3.  
<sup>3</sup> See 15 AAC 23.143(d)(1).  
<sup>4</sup> Ex. 2, p. 5; Ex. 1, p.1.  
<sup>5</sup> Ex. 3, pp. 1, 4.  
<sup>6</sup> Ex. 3, p. 5.

Insofar as one can tell from the documentary record, Ms. D accessed her myPFD account online twice at about noon on September 28, 2013, somewhat before the distribution date for PFDs.<sup>7</sup> This would presumably have informed her that her PFD had been denied. She contacted the division by telephone 33 days later, on October 31, 2013.<sup>8</sup> She completed an appeal form on November 11, 2013, and delivered it to the division on November 19, 2013 (158 days after the denial letter was sent to the address she had given, and 52 days after she learned of the denial by other means).<sup>9</sup>

The division denied the appeal as too late.<sup>10</sup> This formal appeal followed. In her formal appeal form, Ms. D supplied a very brief explanation of why she had initiated the appeal process so late during the fall. She said the June 2013 denial letter “was sent to the right address,” but since she was out of state during the summer, she did not learn that there was any problem until much later.<sup>11</sup>

By notice dated June 12, 2014, Ms. D and the PFD Division were given until July 10, 2014 to send any additional documents or correspondence for consideration in this formal appeal. Both were given until July 24, 2014 to respond to any documents received from the other. The division filed a position statement combined with a motion to dismiss. Ms. D filed nothing further.

Two other collateral facts deserve a mention. First, during the course of the informal and formal appeals, Ms. D has explained that the answer she gave regarding her “principal home” on her 2013 application was simply a mistake, resulting from a misreading of the question.<sup>12</sup> Second, the division has stated that it finds her explanation plausible and has indicated that, if she had appealed on time, Ms. D could have persuaded the division to withdraw its original basis for denial.<sup>13</sup>

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<sup>7</sup> Ex. 10, p. 2.

<sup>8</sup> Ex. 8, p.1.

<sup>9</sup> Ex. 5, p. 9.

<sup>10</sup> This was the only actual basis for denial of the appeal: the only provisions of law cited in the decision of the appeal officer related to the timeliness issue. However, the informal appeal decision sent to Ms. D contained suggestions that there were other bases for denial even though the appeals officer did not actually rely on them. It stated that Ms. D could not prevail in a formal appeal unless she submitted--with her appeal form--proof of every element of PFD eligibility, proof that she did not maintain her principal home outside Alaska, and names, addresses, and telephone numbers of verifiers. Ex. 6, p. 2. While this statement in the informal appeal decision was incorrect on a number of levels, it did not deter Ms. D from proceeding to the formal appeal stage, and thus the error does not have any bearing on the outcome of this case.

<sup>11</sup> Ex. 5, p. 2.

<sup>12</sup> *E.g.*, Ex. 5, p. 3.

<sup>13</sup> Motion to Dismiss at 4.

### III. Discussion

The appeal process for a PFD must be initiated by a request for an informal appeal, which can then be followed, if necessary, by a formal appeal.<sup>14</sup> A person wishing to appeal the denial of a dividend ordinarily must initiate this appeal process within 30 days of the day the division gives notice of its denial of the application.<sup>15</sup> Ms. D filed her appeal more than five months after the division denied her application.

The 30-day appeal window does not apply if the applicant “demonstrates a reasonable cause for the failure to file within this period.”<sup>16</sup> Similarly, the administrative law judge may waive the appeal deadline if adherence to it “would work an injustice.”<sup>17</sup> The issue in this case is whether Ms. D, who has provided only a minimal explanation and made no effort to flesh it out during the formal appeal process, has “demonstrate[d]” a reasonable cause for being late, or if adhering to the deadline in her case creates an injustice.

The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past. Historically, the appeal deadlines have only been set aside in particularly compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

*In re N., OAH No. 05-0595-PFD (2006):* Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. Six-month delay in filing appeal not excused.

*In re B., Caseload No. 040286 (2004):* Division’s denial had errors that may have caused confusion about appeal deadline. Delay of “a week or two” might have been excusable. One year delay in appeal not excused.

*In re G., Caseload No. 030739 (2004):* Applicant missed deadline because he failed to give division a change of address. One year delay in appeal not excused.

*In re H., Caseload No. 040315 (2004):* Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. Two-and-a-half month delay in properly initiating appeal was excused.

*In re S., Caseload No. 040154 (2004):* Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. Six-month delay in properly initiating appeal was excused.

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<sup>14</sup> 15 AAC 05.010(h).

<sup>15</sup> 15 AAC 05.010(b)(5).

<sup>16</sup> *Id.*

<sup>17</sup> 15 AAC 05.030(k).

*In re C.D.M., OAH No. 05-0412-PFD (2005):*<sup>18</sup> Applicant was one month late in initiating his informal appeal of a denial of his 2004 PFD, and had no explanation. Delay not excused.

*In re S.Z., OAH No. 05-0281-PFD (2005):*<sup>19</sup> Applicant was eleven months late in initiating her informal appeal of a denial of her 2003 PFD. She had not seen the denial letter and had not noticed anything was amiss. Delay not excused because “applicants have some responsibility to keep informed.”

In general, waivers have been available where the conduct of the division caused confusion that contributed to delay in starting an appeal, and even then the amount of extra time granted has not been unlimited. An applicant’s busy life or her neglect to inform herself about her appeal rights is not ordinarily a basis to waive the appeal deadline.

In this case, Ms. D failed to keep her address updated with the PFD division, even though she is required to do so.<sup>20</sup> The division did nothing wrong, reasonably concluding based on the answers marked on the application that Ms. D was ineligible and then sending the denial notice to the address she had given them. It was because of Ms. D’s error on her application that her application was denied in the first place, and she was also solely responsible for her failure to learn about the denial. Even when she did learn there was a problem, she waited 52 more days before getting her appeal launched. These circumstances do not establish “reasonable cause” for her delay, nor create a situation where applying the law to her creates an “injustice.”

#### **IV. Conclusion**

Ms. D did not timely appeal the denial of her 2013 PFD application. Her appeal is therefore dismissed.

DATED this 11<sup>th</sup> day of August, 2014.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

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<sup>18</sup> This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

<sup>19</sup> This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

<sup>20</sup> 15 AAC 23.103 provides that “if the individual’s mailing ... address changes before the dividend is paid ..., the individual must notify the department in writing of the change.”

## 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8<sup>th</sup> day of September, 2014.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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