

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

IN THE MATTER OF)	
)	
S M)	OAH No. 14-0144-PFD
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-038-4345

ORDER GRANTING MOTION TO DISMISS

I. Introduction

S M applied for a 2012 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) denied the application because Mr. M indicated that he had obtained a resident Georgia hunting and fishing license. Mr. M filed a late request for an informal appeal. The division upheld the denial of his 2012 PFD application in an informal appeal decision, based on his late appeal. Mr. M then filed a timely request for a formal hearing by correspondence. The hearing record closed on March 10, 2014. Mr. M 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. M’s 2012 PFD application was denied because the division determined that Mr. M was not eligible; he had claimed that he obtained a resident hunting and fishing license for the State of Georgia in 2011.¹ The denial letter for his 2012 PFD was issued on August 17, 2012.² This denial letter and the appeal form provided notice that Mr. M had thirty days, or until September 16, 2012, to file a request for an informal appeal.³

On August 23, 2012, Mr. M sent the Division an email acknowledging that he had received the denial letter and explaining the circumstances surrounding his purchase of a resident hunting and fishing license for the State of Georgia. In this email, Mr. M also inquired about how to send the Division a copy of the hunting license. The division responded in an email, sent the next day, which explained that Mr. M should send any documents that he wanted the division to consider with his request for an informal appeal if he decided to file an appeal of the denial.⁴

¹ Exhibits 1.

² Exhibit 2.

³ Exhibit 2 pages 1 & 6; Exhibit 5 page 1.

⁴ The copy of the substance of this email correspondence is found in the division’s position paper at page 3.

On July 17, 2012, a few days before he filed his request for an informal appeal, the Division received a copy of Mr. M's 2012 hunting and fishing license for the State of Georgia. This license is a nonresident license.⁵

Mr. M did not file a request for an informal appeal within the thirty-day appeal period. Mr. M's request for an informal appeal was dated July 19, 2012.⁶ This means that Mr. M filed his request for an informal appeal about ten months after the thirty-day deadline. The division then issued an informal appeal decision denying the appeal because it was late.⁷

Mr. M filed his request for a formal hearing.⁸ Mr. M complained that unhelpful Division employees were part of the reason his appeal was late.⁹

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.¹⁰ This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.¹¹

The amount of the PFD is calculated by dividing the money that is to be distributed by the best estimate of the total number of qualified applicants. The Alaska Legislature and the division have enacted statutes adopted regulations setting strict deadlines for the PFD application and appeals process. This helps ensure that Alaska does not pay additional PFDs after the money that is to be distributed has already been paid out.

Mr. M's request for an informal appeal was not filed until several months after the passing of the thirty-day deadline. Mr. M's reason for missing the deadline does not excuse his filing his appeal several months late. Mr. M asserts that he chose not to file his appeal until he had the evidence that he needed to show that he was wrong when he indicated on his application that the license was a resident Georgia license. However, Mr. M did send that evidence before he filed his appeal. Furthermore, in the email he sent the division before the deadline, Mr. M asserted had that he already had a copy of his Georgia hunting and fishing license when he sent the email, before the

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 7.

⁸ Exhibit 8.

⁹ Exhibit 4, page 5.

¹⁰ Alaska Regulation 15 AAC 05.010(b)(5).

¹¹ Alaska Regulation 15 AAC 05.030(k).

appeal deadline. Even if Mr. M needed more time to obtain the evidence, he could have filed his appeal and requested more time to obtain it. Mr. M did not indicate in his email that he needed more time to file his appeal or obtain his Georgia hunting and fishing license. The division's email in response did not indicate that he could file his appeal after the deadline. 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.¹²

Mr. M simply failed to meet this deadline. This is unfortunate because he apparently provided incorrect information on his application that led to it being denied. Mr. M's subsequent failure to diligently pursue his appeal by meeting the strict deadline led to the division's decision to let that denial stand. Because of Mr. M's failure to meet his burden of proof to show that it would work an injustice to enforce that deadline, the Division's decision must be upheld.

IV. Conclusion

Mr. M did not request an informal appeal to appeal the denial of his application for his 2012 permanent fund dividend within the appeal period established by law. Mr. M 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. M's application for a 2012 permanent fund dividend will stand.

DATED this 4th day of April, 2014.

By: Signed
Mark T. Handley
Administrative Law Judge

¹² Alaska Regulation 15 AAC 23.103(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 6th day of May, 2014.

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

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