

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

In the Matter of:)	OAH No. 14-1830-PFD
)	
T Q,)	Agency No. 2014-007-1072
K Q,)	Agency No. 2014-007-0918
H Q (minor),)	Agency No. 2014-007-1176
M Q (minor), and)	Agency No. 2014-007-1209
B Q (minor).)	Agency No. 2014-007-1234
)	
<u>2014 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

T Q and his wife K Q applied for the 2014 permanent fund dividend (PFD) for themselves and for their three minor children H, M, and B (hereinafter referred to collectively as the “Qs”). The Department of Revenue, Permanent Fund Division (Division) denied all of their applications on April 4, 2014. The Qs filed their collective informal appeal request on August 5, 2014. The Division denied the appeals as being untimely filed. The Qs appealed.

The Division’s denial is affirmed because the appeals were filed 92 days late, the Qs did not provide reasonable cause for the delay, and adherence to the filing deadlines does not work an injustice.

II. Facts

All facts set out below are based on testimony presented at hearing, unless otherwise footnoted.

The Qs applied for the 2014 PFD. Mr. and Ms. Q’s applications were denied on residency grounds, specifically because they were receiving a homestead property tax exemption in Michigan. That real property is titled in the Q Family Trust. In turn, their children’s applications were denied because Mr. Q, who signed those applications as sponsor, was not an eligible sponsor due to his denial.

The Qs were mailed written notice that their applications were denied on April 4, 2014. Those written notices advised them that the deadline for filing a request for an informal appeal was 30 days after the date of the notice.¹ That very same day, April 4, 2014, Mr. Q engaged in

¹ Ex. 6.

email correspondence with the Division. In that email correspondence, Mr. Q asked about the homestead property tax issue and its relationship to an appeal on April 4, 2014:

If the paperwork to delete the claim of residency and amended property tax is not filed within 30 days and submitted our family would not be able to file this year?²

The Division's response, which was sent later that day, was:

At this point you (*sic*) the entire family is denied. Your only recourse is to file the Request for Informal Appeal and there is a \$25 fee required. The deadline is May 4, 2014.

* * *

To have the denial reversed you would need to submit an amended 2013 property tax bill showing the exemption was removed. If the process to amend the tax bill is not completed by the deadline date to file the request for informal appeal you would explain this on the 2nd page of the request and submit the request timely. Since there is a period of time between when you file the request and when the case would be heard you have some time to work on it. Submit a copy of the amended bill when you receive it.³

The Qs did not file their informal appeal requests by May 4, 2014. Their requests were postmarked August 5, 2014.⁴ This was 92 days after the informal appeal due date.

Mr. Q testified that he read the Division's email as letting him know that he could file the informal appeal request after he resolved the Michigan property tax exemption. He waited until he was in Michigan in June 2014 to resolve the property tax exemption issue, which he did by filing a request with the applicable township on June 2, 2014.⁵ The township then notified him in writing on June 2, 2014 that he was no longer eligible for the property tax exemption and would be receiving a tax bill.⁶ Mr. Q paid the taxes on June 9, 2014.⁷ Mr. Q explained that he waited until he was in Michigan in June to resolve the property tax issue due to the length of time it takes for mail to travel between Alaska and Michigan.⁸

The Qs requested an informal appeal by completing and sending in the informal appeal request forms, along with supporting documents, on August 5, 2014.⁹ Mr. Q testified that he

² Ex. 4, p. 5.

³ Ex. 4, p. 4.

⁴ Ex. 7; Ex. 8, p. 5.

⁵ Ex. 10, p. 7.

⁶ Ex. 10, p. 6.

⁷ Ex. 10, pp. 8 – 9.

⁸ Mr. Q and his family reside in No Name, Alaska.

⁹ Exs. 7, 8.

waited to get a new tax bill before submitting the informal appeal requests. The Division denied the Qs' informal appeal request as having been untimely filed.¹⁰

III. Discussion

There is a two stage administrative appeal process when a PFD application is denied. At the first stage, the applicant requests an informal appeal, which provides an opportunity to have the Division review the denial and determine if it should be reversed.¹¹ The deadline for filing the request for an informal appeal

must be filed with the permanent fund division within 30 days after the date of the notice of assessment or disallowance, unless the individual demonstrates a reasonable cause for the failure to file within this period.¹²

The Qs were sent notice their applications were denied on April 4, 2014. Their informal appeal request was due thirty days thereafter, by May 4, 2014. They undisputedly did not file their informal appeal request until August 5, 2014. This was 92 days after the May 4, 2014 due date. However, the regulations allow the administrative law judge to relax appeal deadlines "if it appears . . . that strict adherence to the deadline . . . would work an injustice."¹³

Factors involved in assessing whether strict adherence to the deadline should be relaxed involve whether the Division confused the applicant regarding deadline issues and whether the applicant has a good chance in succeeding on the merits.¹⁴

The Qs raised three arguments with regard to the timeliness issue. The first two relate solely to the late filing. Mr. Q first argued that he was confused by the Division's April 4, 2014 email, which he maintained told him that he could file his informal appeal request after he resolved the tax issue. A review of the Division's email, however, yields the opposite conclusion. It explicitly informed Mr. Q of the May 4, 2014 deadline, told him he had to file it timely, and that he could file the appeal before the property tax issue was fully resolved:

If the process to amend the tax bill is not completed by the deadline date to file the request for informal appeal you would explain this on the 2nd page of the request and submit the request timely. Since there is a period of time between

¹⁰ Ex. 9.

¹¹ 15 AAC 05.010; 5 AAC 05.020(a).

¹² 15 AAC 05.010(b)(5).

¹³ 15 AAC 05.030(k).

¹⁴ See *In re J. A. C., Jr.*, OAH Case No. 06-0742-PFD, p. 4 (Commissioner of Revenue, 2006); *In re J. J. G.*, OAH Case No. 09-0363-PFD, p. 3 (Commissioner of Revenue, 2009) (Exs. 13, 14).

when you file the request and when the case would be heard you have some time to work on it. Submit a copy of the amended bill when you receive it.¹⁵

The Qs' second argument was similar to their first argument, in that Mr. Q argued he could not honestly file the appeal before disposing of the property tax issue. That argument is similarly addressed by the Division's email, which told him he could file the appeal request before full resolution of the tax issue, and explain it on the appeal request form. Both of the Qs' arguments on this point fail. It must also be noted that the property tax exemption issue was fully resolved on June 2, 2014 when the township wrote him that he was no longer eligible for the property tax exemption and would receive a tax bill.¹⁶ Regardless, even if the Qs' arguments regarding the necessity for completely resolving the tax issue prior to filing the appeal request were persuasive, which they are not, they did not file the appeal request until August 5, 2014, which was 64 days after they resolved the property tax exemption issue. They did not advance any meaningful justification for this delay, instead arguing that they had to wait for a new tax bill. However, the township's June 2, 2014 letter was clear that the property tax exemption had been removed; it was not necessary for them to receive a new tax bill. While there might arguably have been an excusable delay if the Qs' appeal request was filed shortly after the tax issue was resolved, a 64 day delay is not justifiable.

The Qs' final argument relates to whether they would have been successful on the merits. Mr. Q noted that the property was entitled in the Q Family Trust, and not in his and his wife's individual ownership. This is essentially an argument that the Division made an error when it determined the property tax exemption made the Qs ineligible because they did not own the property – in other words, the property tax exemption was not for them personally. It is not necessary to address this argument further, because the Qs did not establish good cause for their late filing.

The Qs did not establish good cause for relaxing the deadlines for filing their informal appeal request. The Division's communications regarding the filing deadlines were not confusing; the Qs did not demonstrate that the delay was reasonable; and strict adherence to the deadlines does not work an injustice.

¹⁵ Ex. 4, p. 4.

¹⁶ Ex. 10, p. 6.

IV. Conclusion and Order

IT IS HEREBY ORDERED that the Division’s denial of the Qs’ informal appeal request as having been untimely filed is AFFIRMED.

DATED this 29th day of December, 2014.

Signed _____
Lawrence A. Pederson
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 26th day of January, 2015.

By: *Signed* _____
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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