

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

IN THE MATTER OF)	
)	
S N T)	OAH No. 14-1851-PFD
<u>2014 Permanent Fund Dividend</u>)	Agency No. 2014-002-8106

DECISION

I. Introduction

S N T applied for a 2014 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (division) denied the application. Ms. T filed a late request for an informal appeal of the division’s denial; the division upheld the denial, in an informal appeal decision, based on her late appeal. Ms. T then filed a timely request for a formal hearing by correspondence. PFD specialist Bethany Thorsteinson represented the division and filed a Motion to Dismiss on the basis of untimeliness. The division’s motion is granted because Ms. T did indeed miss the deadline to appeal, and she has not shown reasonable cause for doing so.

II. Facts

Notwithstanding 2012, Ms. T received dividends throughout her childhood and into adulthood. Her 2012 PFD application was denied because she failed to provide documentation that would establish her absences in 2011 were allowable, she filed 2011 Montana resident taxes, and she failed to establish her presence in Alaska for at least 72 hours in 2010 or 2011.¹ Ms. T did not appeal the denial of her 2012 PFD. She did not file a 2013 PFD application. On January 1, 2014 Ms. T submitted a 2014 application by computer.²

On her 2014 application, she gave her date of birth as her Alaska residency begin date and revealed she was absent from Alaska from January 6, 2012 to May 15, 2013 working out of the country. By letter dated January 31, 2014, the division informed Ms. T that her application was incomplete and several additional pieces of paper would be required before her application would be considered complete.³ She completed and filed the 2014 Adult Prior Year Non-Filer form and the 2014 Working Out of State Questionnaire on March 10, 2014.⁴

¹ Exh. 9 at 4 – 8.
² Exh. 1.
³ Exh. 2 at 1, 2.
⁴ Exh. 2 at 3 – 6.

On May 23, 2014, the division mailed Ms. T a Notice of Denial informing her that her most recent period of residency for PFD purposes began May 15, 2013.⁵ To be eligible, an applicant must have been a resident on January 1 of the qualifying year. 2013 is the qualifying year for 2014.

The denial letter was mailed to the address provided by Ms. T on her 2014 PFD application. This letter informed Ms. T that her deadline to file an informal appeal was June 22, 2014.⁶ The denial letter was returned as undeliverable on July 7, 2014.⁷

A request for informal appeal was hand delivered to the division on August 27, 2014. Ms. T wrote in support of her late filed appeal that the division was wrong regarding the resident taxes, and that she left in 2012 to travel and volunteer overseas.⁸ She further wrote that while she was gone her parents divorced. She reasoned that, as a result of the divorce, the informal appeal was either lost in the mail or not forwarded.⁹ The division did not find the reasons given to be reasonable and, on September 15, 2014, denied Ms. T's request for an informal appeal as untimely.¹⁰

Ms. T timely requested a formal hearing by correspondence.¹¹ She wrote that she made “no errors” in filing her Montana taxes and that she has proven that she did not file Montana income taxes as a Montana resident.¹² She wrote as her explanation for not updating her mailing address with the division that it was not necessary to update because she “did not foresee any reason for my PFD application to be denied....”¹³

It is worth mentioning that the division agrees that a timely appeal request would have given Ms. T the opportunity to provide evidence that her absences and other actions taken in 2010 through May 2013 were compatible with maintaining Alaska residency for purposes of the PFD. Had she done so, the division *may* have been persuaded to withdraw its original basis for denial.¹⁴

⁵ Exh. 3.

⁶ Exh. 3 at 1.

⁷ Exh. 4 at 5.

⁸ Exh. 5.

⁹ Exh. 5.

¹⁰ Exh. 6.

¹¹ On October 29, 2014, she confirmed she was seeking a hearing by written correspondence only. Exh. 7.

¹² Exh. 7 at 2.

¹³ Exh. 14.

¹⁴ Motion to Dismiss at 3 – 4 (emphasis added).

III. Discussion

An appeal from the denial of an application for a permanent fund dividend must be filed within thirty days of the date of denial.¹⁵ The administrative law judge may extend the time for filing an appeal when “strict adherence to the deadline...would work an injustice.”¹⁶

Whether dismissal based on an untimely appeal will work an injustice depends on two factors: the individual’s apparent eligibility, and the reasons for the delay in filing the appeal. Where the undisputed evidence establishes that an individual is ineligible, there is no injustice in dismissing an untimely appeal based on a procedural technicality. By contrast, where the evidence is inconclusive, but indicates that an individual may be eligible, dismissal of an untimely appeal may work an injustice, depending on the circumstances.¹⁷ The relevant circumstances include, but are not limited to, the reasons for the delay and the length of the delay.¹⁸ Another factor to consider is whether the division’s conduct, or the applicant’s, is primarily responsible for the delay.¹⁹ The appeal deadline serves an important purpose, and waivers are not granted for insubstantial reasons.²⁰ Ms. T has the burden of proving both her eligibility and that the delay should be overlooked.²¹

A. Apparent Eligibility

The division denied Ms. T’s 2014 PFD application because Ms. T was not a state resident during the entire qualifying year, 2013.²² The division indicated that, had she timely filed an appeal, it is possible that Ms. T *may* have established that she did not sever her residency.

However, it is not apparent from the record that Ms. T is eligible for the 2014 PFD. Upon graduation from college, she elected to travel overseas for a year. She visited Alaska for two weeks for her sister’s wedding. She was found not eligible for the 2012 PFD for several reasons, including filing Montana resident taxes. The only “proof” that she did not file as a resident is her written

¹⁵ 15 AAC 05.010(b)(5).

¹⁶ 15 AAC 05.030(k).

¹⁷ *See, e.g., In Re J.M.Y.*, OAH No. 07-0282-PFD at 2 (Commissioner of Revenue 2007).

¹⁸ *Cf. In Re A.B.H.*, OAH No. 07-0655-CSS at 2 (Commissioner of Revenue 2007); *In Re L.A.*, OAH No. 06-0610-CSS at 3 (Commissioner of Revenue 2006).

¹⁹ *See, e.g., In Re J.A.C., Jr.*, OAH No. 06-0742-PFD (Commissioner of Revenue 2007) (review of cases, concluding: “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”).

²⁰ *See, e.g., In Re D.S.* at 4, 5, OAH No. 09-0033-PFD (Commissioner of Revenue 2009) (historically, waivers granted for “particularly compelling circumstances”; deadline’s “important purpose” is to “prevent...the unlimited revisiting of decisions long in the past”); *In Re S.R.* at 2, OAH No. 08-0561-PFD (Commissioner of Revenue 2008) (as result of lengthy delay, in that case “information needed to evaluate eligibility will now be stale and difficult to obtain”).

²¹ 15 AAC 05.030(h); 2 AAC 64.280(e).

²² Exh. 3, p. 2. *See* AS 43.23.005(a)(3).

statement that she did not and her 2011 tax return.²³ Her 2011 tax return establishes that she had earned income and paid federal income tax in 2011. Her written statement is self-serving and insufficient to meet her burden of proof. Moreover, her trip for two weeks in June is just as easily explained as a sister returning for a sibling's wedding. It is a piece of evidence to be considered with the record as a whole. While it is possible that Ms. T could establish she remained an Alaska resident while absent from the state in 2013, her burden is higher than merely possible: she must show it is probable. When viewed in its entirety, the record is too tenuous to establish that she remained a resident had she timely filed.

Because Ms. T has not established by a preponderance of the evidence that she remained an Alaska resident while absent from January 6, 2012 through May 15, 2013, she is ineligible for a 2014 PFD.

B. Reasons For And Length Of Delay

The 30-day appeal window can be extended if the applicant “demonstrates a reasonable cause for the failure to file within this period.”²⁴ 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.

In re C.D.M., OAH No. 05-0412-PFD (2005):²⁵ Applicant was one month late in initiating his informal appeal of a denial of his 2004 PFD, and had no explanation. Delay not excused.

²³ Exh. 7 at 4, 6.

²⁴ *Id.*

²⁵ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

In re S.Z., OAH No. 05-0281-PFD (2005):²⁶ 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.”

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

Most of the examples cited above address delays much longer than Ms. T’s delay of two months. However, in *In re C.D.M.*, a simple one month delay was not excused where the applicant made no effort to come forward with an explanation. Here the delay was two months, and, like the applicant in *In re C.D.M., supra*, Ms. T provided only a minimal explanation and made no effort to flesh it out during the formal appeal process. Furthermore, the minimal explanation given, that Ms. T could not foresee any reason her application would be denied, is inconsistent with her PFD history of denials.

Ms. T’s failure to provide a current mailing address to the division was the cause of the delay, not the division. She has failed to establish that the reason for the delay was attributable to something other than her own actions or lack thereof.

IV. Conclusion

Ms. T has not shown good cause for her failure to file a timely appeal. She has not shown that strict adherence to the time limit for filing an appeal will work an injustice. Therefore, the division’s motion is granted and Ms. T’s appeal is dismissed.

DATED: May 20, 2016

Signed _____
Rebecca L. Pauli
Administrative Law Judge

²⁶ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

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 27th day of February, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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