

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

In the Matter of)	
)	
N X)	OAH No. 14-2325-PFD
_____)	Agency No. 2014-065-9423

DECISION

I. Introduction

N X did not file a 2011 PFD application by the March 31, 2011 deadline. If she is eligible, she had until March 31, 2012 to file a 2011 Application for Disabled Adult. The division had no record of her filing by the March 31, 2012 deadline. Ms. X believes she did but that the division lost her application or, in the alternative extraordinary circumstances prevented her from timely filing. Ms. X faced debilitating medical and emotional challenges in 2011. However, she has not established that it is more likely than not that these challenges prevented her from timely filing by March 31, 2012. Therefore, the decision of the division to deny her application is upheld.

II. Facts¹

In 2011, Ms. X missed the March 31 filing deadline for the 2011 PFD because she was focused on treatment for, and recovery from, several serious medical conditions, including cancer. These conditions did not resolve, but Ms. X timely filed her 2012 PFD application on March 20, 2012. The division does not have a record of Ms. X filing a 2011 Application for Disabled Adult until after March 31, 2012 even though she believes that she filed 2011 Application for Disabled Adult (2011 Application) with her 2012 PFD application. As proof she submitted a filing receipt from the division dated March 20, 2012, but the receipt does not identify the document received or how many pages were filed.

The division has no record of receiving the 2011 Application any time before March 31, 2012. The division does have a 2011 Application filed on June 15, 2012. The 2011 application filed in June 2012 was denied as untimely and Ms. X appealed.

Ms. X argued that she did file the 2011 application on March 20, 2012 or, in the alternative that her late filing should be excused due to extraordinary circumstances (her medical

¹ The facts are taken from the testimony and agency record.

conditions). The division denied her request and a formal hearing on appeal was held January 20, 2015. Ms. X testified by telephone and explained in further detail the extent of her medical conditions and their debilitating effect on her life.

III. Discussion

As the person filing the appeal, Ms. X has the burden of proving that it is more likely than not that she is eligible for a 2011 PFD.² The legal analysis begins with AS 43.23.011, the Alaska statute that states the application period for a Permanent Fund dividend ends on March 31st of the dividend year. This is a strict deadline subject only to the exceptions contained in statute or regulation. Exceptions are narrowly construed.

The statutory exception applies to members of the armed services eligible for hostile fire or imminent danger pay.³ Ms. X was not in the armed forces, so this exception would not apply to her.

There is a regulatory exception, 15 AAC 23.133(d), that permits an individual (or her authorized representative) to file a late application if the individual was prevented from filing on time by a disability. “Disabled” is defined by statute as “physically or mentally unable to complete and sign an application.”⁴ An applicant who meets the PFD definition of disabled may file an application within one year after the end of the application period pertaining to the dividend for which the individual is applying (grace period).⁵

Because Ms. X is applying for a 2011 PFD, she had until March 31, 2012 to file her 2011 Application. It is not necessary to determine whether Mr. X was disabled on March 31, 2011 because, at this stage, the focus of the inquiry is whether she timely filed by the March 31, 2012 filing deadline or was prevented from doing so by extraordinary circumstances.

Ms. X’s testimony relies on her memory. Other than that she filed her 2012 PFD, there is little in the record to corroborate her claim of filing her 2011 Application. The division has no record of receiving an Application for Disabled Adult prior to March 31, 2012. It has a record of receiving Ms. X’s timely filed 2012 PFD application. If the 2011 Application was filed at the same time, it is probable that the division would have a record. The absence of the record is evidence that the 2011 Application was not filed.

2 15 AAC 05.030.
3 AS 43.23.011(b), (c).
4 AS 43.23.095(2).
5 15 AAC 23.133(e).

In the alternative, Ms. X asks that her late filing be accepted under 15 AAC 23.133(e), extraordinary circumstances. Extraordinary circumstances may excuse a late filing.

Extraordinary circumstances are not defined by regulation. A reasonable person reading 15 AAC 23.133 (d) and (e) would define extraordinary circumstances are present when the applicant could not meet the one year grace period because their disability prevented them filing. Ms. X may not claim she was prevented from filing because of extraordinary circumstances because the evidence conclusively establishes that she timely filed her 2012 Application. Therefore, she could have timely filed the 2011 Application before March 31, 2012.

IV. Conclusion

Ms. X was not able to establish that she timely filed her 2011 Application for Disabled Adult. Nor was she able to establish that she was unable to file this application by March 31, 2012. Therefore, the decision of the division to deny Ms. X's 2011 Application for Disabled Adult because it was untimely is affirmed.

Dated March 25, 2015.

Signed _____
Rebecca L. Pauli
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 24th day of April, 2015.

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