

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

In the Matter of	)	
	)	
F J. X	)	OAH No. 14-2326-PFD
	)	Agency No. 2014-067-3639
<u>2014 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

F X of Anchorage submitted an application for a 2014 Permanent Fund Dividend (PFD) on April 1, 2014. The Permanent Fund Dividend Division (Division) denied the application, both initially and at the informal appeal level, on the basis of untimeliness. Mr. X requested a formal hearing, and the case was heard on February 10, 2015 before Administrative Law Judge Kay Howard. At the hearing, Mr. X represented himself and testified on his own behalf. Peter Scott represented the division.

This case was reassigned to the undersigned owing to the retirement of Administrative Law Judge Howard. Based on the record and the recorded testimony from the hearing, the Division’s denial is affirmed because the application was filed late and did not qualify for any exception to the deadline.

**II. Facts**

Mr. X has lived in Alaska for a number of years; he has been receiving dividends since 1982. In 2013, the qualifying year for the 2014 dividend, he lived in Alaska.<sup>1</sup> Sometime during the qualifying year Mr. X became homeless.<sup>2</sup> He was not a member of the armed forces.<sup>3</sup>

On March 30, 2014, Mr. X visited his credit union and tried “two to three times” to fax his application to the Division’s Juneau office, without success.<sup>4</sup> The following day, he again tried to send the fax through the credit union, getting responses of “busy to no answer.”<sup>5</sup> The fax number for the Juneau office is (907) 465-3470.<sup>6</sup> However, the destination fax number printed at the top of the March 31 fax record, was (907) 465-9470.<sup>7</sup> Somewhere in the faxing process, the “3” in the correct fax number was changed to a “9” and the fax failed to transmit. The fax

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<sup>1</sup> Ex. 3, p. 3 (2014 Adult Application).

<sup>2</sup> Testimony of F X.

<sup>3</sup> *Id.*, question 5.

<sup>4</sup> Ex. 3, p. 2.

<sup>5</sup> *Id.*

<sup>6</sup> Ex. 7.

<sup>7</sup> Ex. 3, p. 7.

confirmation was given to Mr. X with a list of the numbers dialed and the error code for “no answer” printed at the top.<sup>8</sup>

The Division did receive F X’s 2014 Adult Application by fax at 1:01 p.m. on April 1, 2014, when he faxed it from his credit union to the Division’s Anchorage number and received a confirmation sheet showing the transmission was “OK.”<sup>9</sup> On August 22, 2014, the Division denied Mr. X’s application because it had not been received by the deadline of 11:59:59 on March 31.<sup>10</sup> The Division’s decision was affirmed on informal appeal.<sup>11</sup> This appeal followed.

### **III. Discussion**

This case turns singularly on the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year. In passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant has to be both a member of the armed services and eligible for hostile fire or imminent danger pay.<sup>12</sup> Mr. X was not in the armed forces, and so the March 31 deadline was absolute for him.

Through regulations, the Department of Revenue has set out the details of how the March 31 deadline will be applied. Under 15 AAC 23.103(a), the application “must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed.” Here, the fax from the credit union did not reach the division until after the deadline had passed. Since the application was not received by the department during the application period, it was not timely filed.

There is a related regulation, 15 AAC 23.103(g), that deals with the problem of applications received after the deadline. It reads:

It is an individual’s responsibility to ensure that an application is timely delivered to the department. A paper application must be timely delivered to the department during normal business hours or delivered to the post office in sufficient time to be postmarked before the end of the application period.

The Department of Revenue is bound by its own regulations. It is not allowed to make exceptions because it sympathizes with people. In Mr. X’s situation, the fact that he had become

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<sup>8</sup> Ex. 3, p. 3.

<sup>9</sup> Ex. 5, p. 3.

<sup>10</sup> Ex. 2.

<sup>11</sup> Ex. 4.

<sup>12</sup> AS 43.23.011(b), (c). Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline. See AS 43.23.055(3), (7). These have no relevance to Mr. X.

homeless makes his inattention more understandable, but his situation does not change the scope of exceptions to the March 31 deadline. Without evidence proving that the Division was in error—that they had, in fact, received Mr. X’s application before the deadline—the Department of Revenue has no discretion in this matter. It cannot grant Mr. X a dividend.

Mr. X’s testimony indicated that he was aware on March 30 and 31 that the credit union had not sent his faxes correctly. At that time he had options which would have likely resulted in a timely filing. First, he could have gone downtown to turn in the application by hand. Second, he could have reviewed the fax confirmation document to ensure that it was received by the division. A review of the numbers dialed or the errors noted in the top corner of the document would have informed Mr. X that the fax had been sent incorrectly. Finally, Mr. X could have gone to a post office; if the application had been postmarked on either March 30 or 31, it would have been considered timely filed.

**IV. Conclusion**

Because he applied too late, Mr. X cannot receive a 2014 dividend. This decision does not affect his ability to qualify in 2015 or future years.

DATED this 26<sup>th</sup> day of June, 2015.

By: Signed  
Christopher Kennedy  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of July, 2015.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Administrative Law Judge  
Title

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