

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

In the Matter of:	)	
	)	
G J	)	OAH No. 16-0435-PFD
_____	)	Agency No. 2014-066-4958

**DECISION**

**I. Introduction**

The original issues in this case were whether the Permanent Fund Dividend Division (Division) was correct (1) not to issue G J a 2013 Permanent Fund Dividend (PFD) because she did not apply for it, and (2) to deny Ms. J's 2014 and 2015 PFDs because she failed to provide certain required forms to the Division within 30 days of the Division's request.<sup>1</sup> However, following Ms. J's filing of her hearing request, and the referral of this case to the Office of Administrative Hearings (OAH), the Division filed a motion to dismiss Ms. J's appeal to OAH concerning her 2014 PFD application on the basis that her hearing request was not filed within the time period required by regulation, and the parties settled as to the 2015 PFD.<sup>2</sup> Accordingly, the only issues now before me are (1) whether Ms. J is entitled to receive the 2013 PFD, for which she did not apply, and (2) whether Ms. J's appeal of the Division's denial of her 2014 PFD application can be considered on its merits, or (instead) must be dismissed because it was not filed within the period required by the applicable regulations.

Review of the parties' exhibits indicates that there is no evidence that Ms. J ever applied for the 2013 PFD. Accordingly, she is not entitled to receive it. The parties' exhibits also demonstrate that Ms. J's formal appeal (request for hearing) concerning the Division's denial of her 2014 PFD application was not filed within 30 days of the Division's issuance of its informal conference decision as required by 15 AAC 05.030(a). Further, although 15 AAC 05.030(k) allows the 30 day appeal deadline to be waived if strict adherence to the deadline would work an injustice, Ms. J failed to demonstrate that injustice will result if the appeal deadline in her case is not waived. Accordingly, Ms. J's formal appeal (request for hearing) concerning her 2014 PFD must be dismissed, due to untimeliness, under 15 AAC 05.030. Because Ms. J's appeal of the denial of the

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<sup>1</sup> Exhibit 8 p. 1; *see also* Exhibit 4 pp. 1 - 2 and Exhibit 7 pp. 1 - 2. In this case, the Division took the position that only Ms. J's 2014 PFD application is properly at issue (*see* Exhibit 9 pp. 1 - 2), and therefore failed to address Ms. J's appeal as to the 2013 and 2015 PFDs. However, by listing the 2013 and 2015 PFDs on her appeal form, Ms. J clearly put them at issue. Accordingly, the 2013 and 2015 PFDs must be addressed, albeit briefly, in this decision.

<sup>2</sup> *See* the Division's *Motion to Dismiss Late Appeal* dated May 17, 2016, and the e-mails between the parties dated May 25 - 26, 2016 (marked as Exhibit 11).

2014 PFD is being dismissed due to untimeliness, this decision does not address the merits of that appeal (concerning whether Ms. J timely filed the forms originally requested by the Division). The Division's decision denying Ms. J's 2014 application therefore remains in effect without review by this office.

## **II. Facts**

Ms. J is 63 years old and lives in the village of No Name, located on No Name Island about five miles off the coast of Alaska.<sup>3</sup> From 1982 through 2012 Ms. J applied for, and was determined to be eligible to receive, 31 consecutive annual PFDs.<sup>4</sup>

Ms. J did not apply for the 2013 PFD.<sup>5</sup> She applied for the 2014 PFD,<sup>6</sup> but made two mistakes in completing her 2014 PFD application. First, she incorrectly answered "yes" to a question asking whether she had received the 2013 PFD.<sup>7</sup> Second, she failed to answer either "yes" or "no" to a question asking whether she wished to have her 2014 PFD electronically deposited directly into her bank account.<sup>8</sup> Ms. J signed her 2014 PFD application on March 27, 2014, and it was received by the Division by March 31, 2014, making the application timely.<sup>9</sup>

On August 15, 2014, the Division mailed a letter to Ms. J requesting additional information to correct the errors on her application.<sup>10</sup> Specifically, the Division requested that Ms. J (1) complete a 2014 Adult Supplemental Schedule form; (2) complete a 2014 Prior Year Non-Filer form; and (3) provide the information necessary for the Division to direct-deposit Ms. J's 2014 PFD. The Division's letter also stated, in bold print, that if the information requested was not postmarked or received by September 14, 2014, Ms. J's 2014 PFD application might be denied.<sup>11</sup>

On December 19, 2014, the Division notified Ms. J that her application for the 2014 PFD had been denied because she had not provided the Division with the forms and information which the Division had requested in its letter of August 14, 2014.<sup>12</sup> The Division's notice further stated

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<sup>3</sup> Exhibit 1 p. 1.

<sup>4</sup> Exhibit 2 p. 1.

<sup>5</sup> Exhibit 2 p. 1. The reason Ms. J did not apply for the 2013 PFD is not in the record.

<sup>6</sup> Exhibits 1, 2.

<sup>7</sup> Exhibit 1 p.1.

<sup>8</sup> Exhibit 1 p. 1.

<sup>9</sup> Exhibit 1 p.1; Exhibit 3 p. 1.

<sup>10</sup> All factual findings in this paragraph are based on Exhibit 3.

<sup>11</sup> Under 15 AAC 23.173(d), unless an applicant has requested and been granted an extension of time, the applicant must provide the Division with all information requested, within 30 days of the Division's request, or the application will be denied.

<sup>12</sup> Exhibit 4 p. 1.

that, if Ms. J wished to appeal the denial of her 2014 PFD application, she was required to file a Request for Informal Appeal form within 30 days (by January 18, 2015).<sup>13</sup>

Ms. J subsequently filed a Request for Informal Appeal, which was received by the Division on December 30, 2014.<sup>14</sup> In her appeal, Ms. J stated that she had been away from No Name during most of August 2014 gathering subsistence foods, and that she "did not know about the form listed."<sup>15</sup>

On April 24, 2015, a Division appeals technician sent a letter to Ms. J.<sup>16</sup> The letter requested that Ms. J provide "a signed and completed copy of the enclosed 2014 Adult Prior Year Non-Filer form," and "a signed and completed copy of the enclosed 2014 Adult Supplemental Schedule," by May 24, 2015. The letter further stated that, if the Division did not receive these forms by May, 24, 2015, the Division's prior denial of Ms. J's 2014 PFD application would be upheld.

The Division never received the 2014 Adult Prior Year Non-Filer form or 2014 Adult Supplemental Schedule from Ms. J.<sup>17</sup> Accordingly, on June 8, 2015 the Division issued an Informal Appeal Decision upholding its denial of Ms. J's 2014 PFD application.<sup>18</sup> The Informal Appeal Decision specifically stated that, if Ms. J wished to appeal further by requesting a formal hearing, she was required to submit a Request for Formal Hearing appeal form to the Division within 30 days of the date of the informal Appeal Decision.<sup>19</sup> Included with the Informal Appeal Decision was a blank Request for Formal Hearing form, which bore a stamp stating "This Form Must Be Received or Postmarked on or before: July 8, 2015."<sup>20</sup>

On March 29, 2016 Ms. J signed and mailed the Request for Formal Hearing form, and the form was received by the Division on April 4, 2016.<sup>21</sup> Ms. J requested a hearing by correspondence as to the 2013 PFD (which she had not applied for), the 2014 PFD, and the 2015 PFD. However, she did not indicate on the appeal form that she disputed any of the Division's factual findings or legal conclusions, or otherwise assert any grounds on which to overturn the Division's decision. Ms. J included with her appeal form signed copies of the Division's 2014 Adult Supplemental

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<sup>13</sup> Exhibit 4 pp. 1 - 2.

<sup>14</sup> Exhibit 5.

<sup>15</sup> Exhibit 5 p. 2.

<sup>16</sup> All factual findings in this paragraph are based on Exhibit 6.

<sup>17</sup> Exhibit 7 p. 2.

<sup>18</sup> Exhibit 7.

<sup>19</sup> Exhibit 7 p. 2.

<sup>20</sup> Exhibit 8 p. 1.

<sup>21</sup> All factual findings in this paragraph are based on Exhibit 8.

Schedule and 2014 Adult Prior Year Non-Filer forms. However, those forms were, at best, only partially completed.

On April 15, 2016, the Division's hearing representative wrote Ms. J regarding her 2013, 2014, and 2015 PFDs.<sup>22</sup> The Division's letter stated that, because the Division had no application on file for Ms. J for the 2013 PFD, and because Ms. J had not filed an informal appeal as to her 2015 PFD application, the Division did not consider the 2013 and 2015 PFDs to be included in Ms. J's formal appeal. The letter also indicated that the Division was open to resolving the dispute regarding the 2015 PFD informally, and requested information from Ms. J to allow the Division to determine her eligibility for the 2015 PFD.

On May 5, 2016 one of Ms. J's nieces provided the Division with information pertaining to Ms. J's 2015 PFD application.<sup>23</sup> On May 11, 2015 the Division reversed its prior denial of Ms. J's 2015 PFD application, apparently based on this new information.<sup>24</sup> On May 17, 2016 the Division filed a motion to dismiss Ms. J's appeal as to the 2014 PFD based on untimeliness. On May 26, 2016 one of Ms. J's nieces filed a limited power of attorney appointing her as Ms. J's representative in this matter.<sup>25</sup> On May 27, 2016, the deadline for filing evidence in this case, Ms. J's niece sent an e-mail which stated in part:<sup>26</sup>

From what I can recall for that year she was subsistence food gathering . . . . [One] of her older daughters was responsible for checking the mail [and making sure that] anything with a due-date [was] taken care of. She never actually saw the [Division's request] for [the] 2014 Supplemental Schedule . . . . Also, she went away to No Name for a few weeks to spend time with her oldest son [and] his new family. When she found out that she was supposed to have received [and] sent back paperwork for her 2014 dividend she did them. Unfortunately, it was past the date . . . .

After May 27, 2016 the record closed and the case became ripe for decision.

### **III. Discussion**

#### **A. *The Alaska Permanent Fund Dividend Program***

In 1967 large oil reserves were discovered on state-owned land in Prudhoe Bay, resulting in a substantial increase in state revenue from the taxes levied on the oil.<sup>27</sup> It was decided that part of the income generated by these oil reserves, and by Alaska's other natural resources, should be

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<sup>22</sup> All factual findings in this paragraph are based on Exhibit 9 p. 1.

<sup>23</sup> Exhibit 11 p. 1.

<sup>24</sup> Exhibit 10 p. 1.

<sup>25</sup> Exhibit 11 p. 2.

<sup>26</sup> Exhibit 11 p. 3.

<sup>27</sup> *Zobel v. Williams*, 457 U.S. 55, 56 (1982).

invested to maximize the state's long-term income.<sup>28</sup> In 1976 the Alaska Constitution was amended to establish the Alaska Permanent Fund.<sup>29</sup> The amendment requires that 25 percent of the state's mineral income be deposited into the Permanent Fund.<sup>30</sup>

In 1980, the Alaska legislature enacted a program under which a portion of the Permanent Fund's earnings are distributed, on an annual basis, to Alaska residents who meet certain eligibility requirements.<sup>31</sup> These earnings are distributed in the form of dividends (PFDs). The Department of Revenue (DOR) administers the PFD program through its Permanent Fund Dividend Division.<sup>32</sup>

***B. Is Ms. J Entitled to the 2013 Alaska Permanent Fund Dividend?***

Under A.S. 43.23.005(a)(1), a person must file an application for a PFD in order to be eligible to receive a PFD. Under 15 AAC 23.103(a), the application form must be postmarked or received by the Division within the application period set by A.S. 43.23.011<sup>33</sup> to be considered timely filed.<sup>34</sup> There is no evidence that Ms. J filed an application for the 2013 PFD within the required period. In fact, the evidence submitted by the Division indicates that Ms. J *never* filed an application for the 2013 PFD.<sup>35</sup> Further, Ms. J never explicitly asserted, and never submitted any evidence indicating, that she *did* apply. Even assuming that Ms. J filed a timely application for the 2013 PFD, but the postal service or Division misplaced it, the period for submitting documentation to prove such a filing expired on December 31, 2013, over two and one-half years ago.<sup>36</sup> Accordingly, under the applicable statutes and regulations, Ms. J is not entitled to the 2013 PFD, and it is now simply too late to remedy that situation.

***C. Did Ms. J File her Formal Appeal for the 2014 Alaska Permanent Fund Dividend Within the Period Required by Regulation?***

Under 15 AAC 05.030(a), where (as here) a request for a formal hearing follows an informal conference (informal appeal), "it must be filed within 30 days after the date the informal conference decision is issued." In this case, the Division issued its informal conference decision concerning Ms. J's 2014 PFD application on June 8, 2015.<sup>37</sup> Thus, the deadline for filing an informal appeal

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<sup>28</sup> *Id.* at 57; *see also Harrod v. State*, 255 P.3d 991 (Alaska 2011).

<sup>29</sup> Alaska Constitution, Article IX, Section 15; *see also Harrod v. State*, 255 P.3d 991 (Alaska 2011).

<sup>30</sup> Alaska Constitution, Article IX, Section 15.

<sup>31</sup> AS 43.23.005(a); *Zobel*, 457 U.S. at 57, *cited in Harrod*, 255 P.3d 991 (Alaska 2011).

<sup>32</sup> AS 37.13.040.

<sup>33</sup> Under A.S. 43.23.011(a), applications for permanent fund dividends must be filed between January 1 and March 31 of the applicable dividend year.

<sup>34</sup> There are a few exceptions to this rule, but there has been no assertion that any of them apply in this case.

<sup>35</sup> Exhibit 9 p. 7.

<sup>36</sup> *See* 15 AAC 23.103(h).

<sup>37</sup> Exhibit 7 pp. 1 - 2.

was Wednesday, July 8, 2015. It is undisputed that Ms. J's formal appeal was postmarked on March 29, 2016 and received by the Division on April 4, 2016.<sup>38</sup> Accordingly, Ms. J's formal appeal was filed approximately nine months late. The only remaining issue is whether there are any grounds on which to excuse Ms. J's untimely filing.

***D. Has Ms. J Shown Good Cause to Relax the Appeal Deadline?***

The regulation which allows the 30 day formal appeal deadline to be relaxed under certain circumstances is 15 AAC 05.030(k). Under that regulation, the administrative law judge (ALJ) "may waive any requirement or deadline established in 15 AAC 05.010 - 15 AAC 05.030 if it appears to the [ALJ] that strict adherence to the deadline or requirement would work an injustice...."

The question of whether holding an applicant to a statutory or regulatory deadline will "work an injustice" in a given case is somewhat subjective because there are many degrees of injustice. Fortunately, a body of administrative case law has developed over the years interpreting the "injustice" requirement of 15 AAC 05.030(k). These cases were surveyed recently in *In The Matter Of Halliburton Energy Services, Inc.*, OAH No. 15-0652-TAX, 2015 WL 10528704 (Alaska Department of Revenue, September 28, 2015),<sup>39</sup> where it was stated:<sup>40</sup>

Historically, Revenue appeal deadlines have been interpreted quite strictly, and an appellant who misses the deadline by a significant margin has typically found relief only when confusing behavior or notices by Revenue contributed to the appellant's failure to meet the deadline . . . . Another factor in the waiver decision is whether the appellant has a colorable claim for reversal of the decision below. This factor is considered because many of those who appeal Revenue decisions late lay out bases for appeal that are, on their face, legally insubstantial. [Internal footnotes deleted].

In this case, there is no evidence of any confusing behavior by Division employees, or any confusing notices sent by the Division to Ms. J. Further, Ms. J's appeal is not very strong on its merits, because all the evidence in the record indicates that she failed to file the information / forms requested by the Division within the 30 day period required by regulation. Accordingly, the factors identified in the *Halliburton* decision (discussed above) weigh in favor of enforcing the appeal deadline in this case.

Finally, in *Halliburton*, the late-filing of the appeal was excused in large part because the appeal was only four days late. In contrast, Ms. J's appeal was almost nine months late.

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<sup>38</sup> Exhibit 8 pp. 1, 6. There are two different PFD office stamps on Ms. J's appeal form and the envelope it was mailed in. One is dated April 4, 2016, while the other is dated April 13, 2016. Ms. J's appeal was untimely regardless of which of these two dates is correct.

<sup>39</sup> This decision can be accessed through the Office of Administrative Hearings' website at <http://aws.state.ak.us/officeofadminhearings/Documents/TAX/LFLP/TAX150652.pdf>.

In summary, based on the way 15 AAC 05.030(k) has been interpreted in prior cases, I find that enforcing the 30 day formal appeal deadline in this case will not result in an injustice.

#### **IV. Conclusion**

There is no evidence that Ms. J ever applied for the 2013 PFD. Accordingly, she is not entitled to receive the 2013 PFD. With regard to Ms. J's 2014 PFD application, it is clear that her formal appeal was not filed within 30 days of the Division's issuance of its informal conference decision as required by 15 AAC 05.030(a). Further, although 15 AAC 05.030(k) allows the 30 day appeal deadline to be waived if strict adherence to the deadline would work an injustice, Ms. J failed to demonstrate that injustice will result if the appeal deadline in her case is not waived. Accordingly, Ms. J's formal appeal (request for hearing) concerning her 2014 PFD is dismissed, due to untimeliness, under 15 AAC 05.030(k). The Division's decision denying Ms. J's 2014 PFD application therefore remains in effect without review by this office.

DATED this 25th day of July, 2016.

By: Signed  
Jay Durych  
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 11<sup>th</sup> day of August, 2016.

By: Signed  
Signature  
Jay D. Durych  
Name  
Administrative Law Judge  
Title

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

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<sup>40</sup> *Halliburton* decision at pp. 3 - 4.