

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

In the Matter of)	
)	
J S. M)	OAH No. 16-0591-PFD
)	Agency No. 2015-067-6552
<u>2015 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

J M of Anchorage submitted an application for a 2015 Permanent Fund Dividend (PFD) on June 17, 2015. She contends that this was merely a replacement because a prior application, submitted prior to the March 31 filing deadline, had apparently been misplaced. The Permanent Fund Dividend Division, which has not been able to locate any prior application, has denied the application, both initially and at the informal appeal level, on the basis of untimeliness.

Ms. M requested a formal hearing, and the case was heard on June 29, 2016 before the undersigned. At the hearing, Ms. M submitted some new documents and explained her belief that a prior application had been submitted. However, after considering all of the evidence, the undersigned must affirm the Division’s denial because it is more likely than not that no timely application was filed, and Ms. M did not qualify for any exception to the filing deadline.

II. Facts

Ms. M is a 70-year-old lady who has lived in Alaska for several years. She does not appear to be disabled in any way, and no claim of disability has been made on her behalf. She has not been a member of the armed forces in 2014 or 2015.¹

2015 was the first year Ms. M could have been eligible for a PFD. Ms. M recounts that she filled out a 2015 PFD application in February of 2015 with the help of a church friend, D N. B, age 84. She says she gave the application to Ms. B, who promised to mail in both applications together. She did not see Ms. B mail the applications, and there is no testimony from Ms. B that she mailed Ms. M’s application.²

¹ Ex. 1, p. 1.

² A written statement from Ms. B (Ex. B) asserts that Ms. M “applied at the same time” she did, but does not say how that supposedly occurred.

Ms. B did apply for a PFD for herself before the March 31, 2016 deadline,³ but Ms. M's application was not with Ms. B's. The PFD Division does not have a timely application in its files for Ms. M.

In June of 2015, Ms. M's friend T H became concerned that Ms. M did not have a receipt for her application. She and Ms. M inquired and found out from the PFD Division that no application was on file for Ms. M. Ms. M submitted a substitute application on June 17, 2015,⁴ which was denied as untimely. That denial was affirmed on informal appeal.⁵ This appeal followed.

III. Discussion

This case turns 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.⁶ Ms. M was not in the armed forces, and so the March 31 deadline was absolute for her. Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,⁷ but again, Ms. M is not in these categories and thus must show she applied by March 31 of the dividend year.

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."

Ms. M's theory is that the Department probably did receive her first application during the application period, because Ms. B mailed it to them. Her theory is that the PFD Division has misplaced it. I find that this is not the likely explanation for the absence of a timely application in the agency's records. Instead, it is much more likely that Ms. B did not include an application from Ms. M when she mailed in her own application, and any application that Ms. M may have handed over to her was simply never sent to the Department of Revenue. Thus, I find that no

³ Ex. A shows that this must have occurred.

⁴ Ex. 1.

⁵ Ex. 4.

⁶ AS 43.23.011(b), (c).

⁷ See AS 43.23.055(3), (7).

application for Ms. M was “received by the department or postmarked during 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 Ms. M’s situation, the fact that she chose to trust a friend is understandable, but it does not change the scope of exceptions to the March 31 deadline. Without evidence showing that the PFD Division probably made a mistake—that they probably had, in fact, received Ms. M’s application before the deadline, and then lost it—the Department of Revenue has no discretion in this matter. It cannot grant Ms. M a dividend.

IV. Conclusion

Because she applied too late, Ms. M cannot receive a 2015 dividend. This decision does not affect her ability to qualify in 2016 or future years.

Dated this 1st day of August, 2016.

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 2nd day of September, 2016.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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