

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

In the Matter of)	
)	
L Q & N Q, J D AND U D (minors))	OAH No. 16-0711-PFD
)	Agency No. 2015-067-5460/61/69/68
)	
_____)	

DECISION & ORDER

I. Introduction

This case is L Q’s appeal of the denial of her late filed 2015 permanent fund dividend (PFD) applications for herself and the children she sponsored, N Q, J D and U D. The Division determined that Ms. Q and the children were not eligible, and it denied the applications initially and at the informal appeal level. Ms. Q requested a formal hearing. The hearing was held by correspondence, and the record closed on August 8, 2016.

PFD Appeals Manager, Robert Pearson represented the division and filed a position paper. Administrative Law Judge Mark T. Handley was assigned the appeal.

The administrative law judge concludes Ms. Q and the children’s 2015 PFD applications should be denied. The evidence in the record shows that Ms. Q’s PFD applications were postmarked after the deadline even though envelopes also bore private meter stamps dated the day of the deadline.

IMPORTANT NOTE: The children, N Q, J D and U D, may be eligible for their missed 2015 dividends when they turn 18 years old. An individual who is 18 years old may file for a prior year dividend if an application was not timely filed by that person's sponsor when the child was a minor. Dividend applications for a prior year must be filed before the child is 19 years old. N Q, J D and U D’s eligibility will be determined at the time they file, if they file during that one-year period. ¹

II. Facts

Ms. Q filed a paper 2015 PFD applications for herself and the children that were postmarked April 1, 2015 in two envelopes. The postmarks were marked “No Name, ALASKA”. The postmarks are both dated “APR -1 2015”. The envelopes also are marked with a private meter stamp. One private stamp has a “MAR 2015” date with the actual day unreadable. The second

¹ See Alaska Statute 43.23.055(3) & Alaska Regulation 15 AAC 23.133(b)-(c).

envelope has a private meter stamp with the date “MAR 31 2015.”² Ms. Q did not assert that she had filed other 2015 PFD applications earlier. In her request for informal appeal and a formal hearing, Ms. Q asserts that she mailed the applications in a timely manner. Ms. Q also asks that the child J receive an application from her father, K D.³

In its position paper, the Division explained that K D’s was first paid and then denied, and that denial was not appealed to the informal conference level. Two letters were filed on Ms. Q’s request by the Post Office. Neither of these letters admits postal error in postmarking the application after the deadline.⁴

III. Discussion

Ms. Q did not file a 2015 PFD application before April 1, 2015. The regulations covering situations like Ms. Q’s, where an envelope filed with the Division that has both a private meter stamp and a Post Office postmark requires that the Division use the date of the Post Office postmark as the date of filing.⁵ This may be because it is possible for someone with a private meter to roll back the date. This may not have been what happened in Ms. Q’s case. She may have used the correct date on the meter, but the envelopes simply did not arrive at the Post Office in time to be postmarked before the deadline. The post office routinely postmarks over private meter stamps when the private meter date does not reflect the date that the mail was delivered to the post office. However, it does not matter how the envelopes came to be private meter stamped with a date on the day of the application deadline, and postmarked the day after the deadline. The regulation requires that the Division use the postmark to determine the filing date to determine whether the PFD applications were timely filed.

For each dividend year, there is a three-month application period that starts on January 1, and ends on March 31 of the relevant year.⁶ A PFD applicant has the responsibility of ensuring that her applications are postmarked or received by this deadline.⁷

The laws regarding permanent fund dividends do not allow the Division to create exceptions to the rules regarding filing of applications, even in particularly compelling cases.⁸

² Exhibit 1, page 3 & Exhibit 7, page 13

³ Exhibit 9, pages 2 & 27.

⁴ Exhibit 7, pages 2 & 27.

⁵ 15 AAC 23.103(a).

⁶ Alaska Statute 43.230011(b) & (c).

⁷ Alaska Regulation 15 AAC 23.103(g).

⁸ 15 AAC 05.030(h).

When an application is postmarked after the deadline, the PFD applicant must provide an official admission of postal error in order to have the PFD application treated as timely. The deadline for PFD applications is governed by 15 AAC 23.103. Subsection (a) of this regulation reads in part, “an application must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed.” Subsection (g) of the regulation 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 will deny a paper application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting. An online application must be received electronically by the department by midnight Alaska Daylight Time on the last day of the application period. An applicant's proof of timely filing an online application is a copy of the computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process that shows that the online application was timely delivered to the department.

Ms. Q's 2015 PFD applications were postmarked after the deadline. The evidence shows that her applications were probably delivered to the post office on April 1, 2015. This was not in sufficient time to be postmarked before the end of the application period, and there was no admission of a postal error. Ms. Q did not provide the Division with a statement from a United States Postal Service employee that described the specific circumstances under which the postal error caused a delay in postmarking his application, or incorrectly postmarking the applications, with a date that was after it was delivered to the post office.

The letters Ms. Q provided indicate that the envelopes were properly handled and postmarked. For example, these letters, which are found at exhibit 7, pages 17 and 18, include the following assertions indicating that there was no postal error:

We reviewed our files and confirm that a Fairbanks Clerk was in the Fort Yukon Post Office from March 30, 2015 to April 10, 2015. The clerk confirmed that she immediately processed all the outgoing mail from the day she arrived to when she left the office.

The postmark by the Fort Yukon Post Office clearly shows the date as April 1, 2015 as being cancelled with a metered mail date of March 31, 2015.

Postal regulations require that metered mail must match the date of the deposit in to Postal collection box or handed to the Retail Clerk. We confirmed with the acting Postmaster for the Yukon Post Office that all mail was processed on time for March 31, 2015 and on April 1, 2015.

Because we cannot describe any postal error associated with the late postmark on your PFD application, the Postal Service considers the April 1, 2015 postmark to be accurate. We regret that we cannot write a letter supporting the claim that the application was mailed by March 31, 2015.

The letters indicate that if the Post Office had discovered that it had failed to timely stamp Ms. Q's PFD applications, the envelopes would have stamped the envelopes with a "Delayed in Postal Handling" stamp. Mr. Q's envelopes were not stamped "Delayed in Postal Handling."

As the Division points out changing sponsors would not help in this case because the proposed sponsor was also ineligible for a 2015 PFD. Furthermore, even if the was an eligible sponsor for one or more of the children it would not make them eligible because the children's applications were filed after the deadline.

Because Ms. Q did not file a timely 2015 PFD applications, the only possible result of this case is to conclude that Ms. Q and the children's applications should be denied.

An individual who is 18 years old may file for a prior year dividend if an application was not timely filed by that person's sponsor when the child was a minor.⁹ N Q, J D and U D may be eligible for their missed 2015 dividend when they turn 18 years old if they apply after their 18th birthday but before they are 19 years old.

IV. Conclusion

IT IS HEREBY ORDERED that the applications of L Q for herself and her children, N Q, J D and U D, for 2015 permanent fund dividends be DENIED.

DATED this 22nd day of August, 2016.

By: _____
Mark T. Handley
Administrative Law Judge

⁹ See Alaska Statute 43.23.055(3) & Alaska Regulation 15 AAC 23.133(b)-(c).

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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 26th 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.]