

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

|                                      |   |                          |
|--------------------------------------|---|--------------------------|
| In the Matter of                     | ) |                          |
|                                      | ) |                          |
| N C & B D SR.,                       | ) | OAH No. 16-1153-PFD      |
| A, B, C, D & E D, F C & G H (MINORS) | ) | Agency No. 2016-067-2654 |
| _____                                | ) |                          |

**DECISION**

**I. Introduction**

The permanent fund dividend division denied N C’s 2016 permanent fund dividend application as well as those of her husband and children because the applications were not postmarked or received by the division before the end of the application period. Ms. C appealed, citing postal service error.

Because the applications were received by the division after the close of the application period, and the envelope does not show that the applications were postmarked before the end of the application period, the division’s denial of the applications is affirmed.

**II. Facts**

N C lives in No Name with her husband B D and six children, A, B, C, D, and E D, F C, and G H (the family).

No Name did not have a permanent postmaster in March 2016. Instead, No Name was relying on USPS employees from other communities. From March 7 until approximately March 12, 2016, S E was at the post office in No Name. The post office was then closed for two weeks, until H Y from No Name arrived.<sup>1</sup> There was conflicting testimony about when Mr. Y was working at the post office in No Name. Mr. Y reported that he was assigned to the No Name post office for the period March 20 - April 1, 2016. T K, who works for the City of No Name, provided a letter stating that Mr. Y was in No Name “until the 31st of March 2016. I know this for fact because I invoiced him and received payment for his 11 nights of lodging.” Ms. K attached a copy of an invoice for “11 nights of lodging March 21 - 30, 2016” as well as a receipt for “3/21/16 - 3/31/16.” Eleven nights beginning the night of March 21, 2016 would be through the night of March 31, 2016. At the hearing Ms. C argued that Mr. Y

---

<sup>1</sup> Letter from T K dated November 17, 2016.

was only in No Name until March 31, 2016. Mr. D's request for informal appeal stated that the applications were "mailed out on March 31, 2016 last day of temp post master who wasn't from our region or village."<sup>2</sup> Mr. Y testified that he flew out of No Name on April 1, 2016. Based on all of the testimony and evidence presented, it is more likely than not that Mr. Y was in No Name working at the post office on April 1, 2016.

Ms. C and her husband submitted the family's 2016 PFD applications by mail. The division received the applications on April 7, 2016.<sup>3</sup> The envelope the division received did not have postage or a postmark.<sup>4</sup> However, the envelope did have an orange bar code indicating that it was processed in the United States Postal Service's (USPS) Juneau letter automation equipment on the fifth day of the month between 9:00 and 10:00 p.m.<sup>5</sup>

The division denied the family's applications, on the grounds that the applications were received on April 7, 2016, and the family had not provided documentation or evidence to show that the applications were submitted on or before March 31, 2016.<sup>6</sup> The family requested an informal appeal.<sup>7</sup> For each of the family's applications, the division determined that the original denial was correct.<sup>8</sup> The family requested a formal hearing.<sup>9</sup>

A telephonic hearing was convened on November 7, 2016 and continued on November 17, 2016. N C and B D represented themselves and their children. Peter Scott, Permanent Fund Dividend Specialist I with the division, represented the division. T K of the City of No Name and T D of NANA testified for Ms. C and family. H M. Y of the United States Postal Service testified for the division.

### **III. Discussion**

The application period for 2016 permanent fund dividends ended on March 31, 2016.<sup>10</sup> According to the division's regulations, it is the applicant's responsibility to ensure that the application is timely. Specifically, the regulations provide:

It is an individual's responsibility to ensure that an application is timely delivered to the department. A paper application must be

---

<sup>2</sup> Exhibit 3 at 6.

<sup>3</sup> Exhibit 1 at 4.

<sup>4</sup> *Id.*

<sup>5</sup> Exhibit 12 at 1.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit 3.

<sup>8</sup> Exhibit 6.

<sup>9</sup> Exhibit 7.

<sup>10</sup> *See AS 43.23.011.*

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.<sup>11</sup>

Under this regulation, an application is timely if it is delivered to the division before the end of the application period. Alternatively, an application is timely if it is postmarked before the end of the application period.

In this case, the dividend applications for the family were not received by the division until April 7, 2017, after the end of the application period. From the bar code on the envelope placed by the handling machinery at the Juneau post office, it is clear that the applications were mailed to the division. However, it is not clear when the applications were mailed, or where they were mailed from.

*A. The lack of a visible postmark*

The envelope the division received with the family's applications does not show that it was postmarked.<sup>12</sup> For purposes of the permanent fund dividend program, "postmarked" means "that an official cancellation stamp has been placed by the United States Postal Service . . . that records the date and place of mailing."<sup>13</sup>

There is no evidence of an official cancellation stamp on the envelope received by the division.<sup>14</sup> There are a few scattered horizontal marks immediately to the right of the box marked "Place Stamp Here." At the hearing, Ms. C testified that the postal employee in No Name had placed two stamps on the envelope, and then postmarked the envelope vertically -- "the post mark was vertically right to the right side of where it says place stamp here." However, Mr. Y testified that he hand cancelled PFD applications using a "round dater." An example of a round hand cancellation mark appears in the record.<sup>15</sup> The marks

---

<sup>11</sup> 15 AAC 23.103(g).

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

<sup>13</sup> 15 AAC 23.993(a)(24).

<sup>14</sup> Exhibit 1 at 4.

<sup>15</sup> Mr. Y compared the stamp he used in No Name to that used to stamp his letter at Exhibit 5, page 5. Mr. Y said the mark of the No Name stamp would look the same, except it would say "No Name" instead of "No Name," and it would have a date in the middle.

on the face of the envelope to the right of the “Place Stamp Here” box are not curved and do not resemble the mark made by a “round dater.”

The envelope received by the division does not bear a postmark that indicates the date and place of mailing.

*B. The letters from the postal service*

The purpose of the postmark requirement is to demonstrate that the application was mailed before the expiration of the application period. Where an application is postmarked after the end of the application period, the division will deny the application. This is true even where the envelope is mailed before the deadline.<sup>16</sup> The only exception to this rule is for cases where the postal service produces an official statement explaining that it posted the item incorrectly or caused the delay.<sup>17</sup>

In this case, the family obtained a letter from Mr. Y about his work at the post office in No Name, and mail service in No Name generally. However, Mr. Y’s letter did not indicate that the postal service had incorrectly posted the applications or caused a delay in posting.<sup>18</sup> The division presented a letter from E Q, a marketing manager with the postal service, stating that the USPS was not able to determine why the envelope with the family’s applications was not postmarked. Ms. Q’s letter noted that the postal service does occasionally misplace envelopes.<sup>19</sup> In a previous case, a letter from the postal service using the same language about misplaced envelopes that was included in Ms. Q’s letter was found insufficient to establish that a late postmark was the result of postal error.<sup>20</sup>

In this case, there is no visible postmark on the envelope to show when the envelope was mailed. The letters from the post office do not “describe specific circumstances under which the postal service incorrectly posted the individual’s application or caused a delay in posting.” The letters would not be sufficient to meet the standard for the division to excuse a late postmark date, and they do not remedy the situation here where the envelope shows no sign of having ever been postmarked. Regardless whether the post office erred in failing to postmark the envelope, the letters from the post office do not establish the date and place of mailing and therefore do not show that the applications were timely.

---

<sup>16</sup> See for example *In re U.O.*, OAH No. 12-0857-PFD.

<sup>17</sup> See *In re J.B.P.*, OAH No. 08-370-PFD.

<sup>18</sup> Exhibit 5 at 5.

<sup>19</sup> Exhibit 5 at 1.

<sup>20</sup> *In re V.C.H.*, OAH No. 09-0264-PFD.

*C. Lack of evidence of timely mailing*

The only issue remaining is whether the applications were “delivered to the post office in sufficient time to be postmarked before the end of the application period.”<sup>21</sup> As discussed above, it does not appear that the envelope was postmarked.<sup>22</sup> However, the family argues that it delivered the applications to the post office in sufficient time to be postmarked on March 31, 2016.<sup>23</sup>

Ms. C and Mr. D consistently asserted that they took the applications to the post office on March 31, 2016. However, their testimony and written statements about what happened at the post office were not consistent. In their requests for formal hearing, Ms. C and Mr. D told the division that they saw the postmaster postmark the envelope with the family’s applications.<sup>24</sup> However, at the hearing, Ms. C questioned why Mr. Y failed to hand cancel the envelope. At the hearing, Mr. D testified that the post master said “he would postmark it and put a stamp and send it out,” not that he saw the postmaster postmark the envelope.<sup>25</sup> From these statements, it is not clear whether Ms. C and Mr. D actually saw the postmaster postmark the envelope, or simply received assurances from the postmaster that he would postmark the envelope.

The other person who would have knowledge of these events would be the post master, Mr. Y. At the hearing, Mr. Y testified that he was the only USPS employee working at the post office between March 20, 2016 and April 1, 2016 and that there was no one else working in the post office. Mr. Y testified that he did not remember Ms. C or Mr. D coming to the post office to mail their permanent fund dividend applications.

---

<sup>21</sup> 15 AAC 23.103(g); 15 AAC 05.030(h) (“At the hearing, the person requesting the hearing has the burden of proving that the action by the department to which that person objects is incorrect.”)

<sup>22</sup> It is also conceivable that the envelope was postmarked with a stick-on meter tape, and that the meter tape fell off, leaving no trace. Mr. Y testified that it was possible that a meter strip could fall off of a piece of mail. However, Mr. Y also testified that “the meter at that facility, it’s an electronic meter, it has to be punched in by hand, so typically on these types of situations, they would have stamps on them. You’d weigh it and then get the amount, and put it on in stamps.”

<sup>23</sup> Exhibits 3 and 7; Testimony of C.

<sup>24</sup> Exhibit 7 at 2 (9/12/16) (“we both witnessed him posted marked [sic] the application”), 4 - 5 (8/24/16) (“he post marked it in front of us”).

<sup>25</sup> Furthermore, Mr. D’s requests for informal appeal stated that “B asked the temporary postmaster if it will be postmarked. He replied yes, and he mailed it out on the morning of March 31, 2016” and “All applicants were in one envelope which should have been postmarked on the morning of March 31, 2016.” Exhibit 3 at 2, 4. Ms. C’s requests for formal appeal stated “My husband & I asked post master on March 31, 2016 if it will be postmarked he [replied] yes” and “I did mail out our pfd apps on the morning of March 31, 2016.” Exhibit 3 at 8, 12.

Ms. C attempted to argue that Mr. Y did not remember them because it was S E who was working at the post office when she and Mr. D mailed the applications.<sup>26</sup> Ms. C testified that she had spoken with Mr. E and that Mr. E remembered the family coming to the post office to mail their applications. However, later in the hearing, Ms. C admitted “I might have been mistaken about S E.”<sup>27</sup>

The only evidence indicating the family’s applications were delivered to the post office in sufficient time to be postmarked before the end of the application period are the statements of Ms. C and Mr. D. Both have a significant financial interest in establishing that the applications were timely. Ms. C and Mr. D’s own statements are inconsistent as to whether they saw the applications postmarked or simply discussed whether they would be postmarked. Mr. Y does not remember Ms. C and Mr. D mailing the applications, and it is more likely than not that Mr. Y (and not S E) was working at the post office on March 31, 2016. Ms. C and Mr. D did not present testimony from anyone who saw them at the post office that day.

Ultimately, Ms. C and Mr. D’s testimony is not sufficient to demonstrate that their applications were delivered to the post office in sufficient time to be postmarked on March 31, 2016.

It is possible that the family’s applications were mailed on March 31, 2016 in time to be postmarked, and that the post office failed to postmark the envelope, or that the meter tape or stamps bearing the postmark fell off the envelope. However, it is also possible that the envelope was dropped in the mail slot after hours, mailed on April 1, 2016 while Mr. Y was still in No Name, or that the envelope was mailed from a different community.

Ultimately, the regulation places responsibility on the individual applicant to ensure that an application is timely. In this case, the applications were received after the end of the application period. The envelope they came in did not have a postmark. Finally, Ms. C and Ms. D did not demonstrate by a preponderance of the evidence that the applications were delivered to the post office in time to be postmarked before the end of the application period.

---

<sup>26</sup> Exhibit 7 at 4.

<sup>27</sup> Testimony of C, November 17, 2016.

#### **IV. Conclusion**

The family's applications for the 2016 permanent fund dividend were not timely. The division's denial of the family's applications is therefore affirmed.

Dated: January 23, 2017.

*Signed*  
\_\_\_\_\_  
Kathryn L. Kurtz  
Administrative Law Judge

### **Adoption**

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 February 21, 2017.

By: *Signed*  
\_\_\_\_\_  
Signature  
Kathryn Kurtz  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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