

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

In the Matter of:	)	
	)	OAH No. 16-1167-PFD
O L	)	Agency No. 2015-050-9061
	)	
<u>2015 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

O L applied for the 2015 permanent fund dividend (PFD). The Department of Revenue, Permanent Fund Division (Division) denied her application on February 19, 2016. Ms. L filed her informal appeal request on June 8, 2016. The Division denied the appeal as being untimely filed. Ms. L appealed.

The Division’s denial is affirmed because Ms. L’s informal appeal request was filed 80 days late. Ms. L did not provide reasonable cause for the delay, and adherence to the filing deadlines does not work an injustice.

**II. Facts**

All facts set out below are based on testimony presented at hearing, unless otherwise footnoted.

Ms. L left Alaska for Colorado in November 2014 to assist her grandmother, who had cancer. She applied for the 2015 PFD. That application was signed by her on February 20, 2015, and was received by the Division on March 9, 2015. Her application did state that she was not in Alaska, but it gave her parents’ mailing and street address in No Name as her addresses.<sup>1</sup> The Division requested additional information from her regarding her absence from the state so that it could process her application. Ms. L’s deadline for providing that information was January 3, 2016.<sup>2</sup>

On January 4, 2016, the Division received a response from Ms. L.<sup>3</sup> The Division then notified Ms. L, in writing, on February 19, 2016 that her application was denied and that she had 30 days from February 19, 2016 to request an informal appeal.<sup>4</sup> All of the Division’s notices

---

<sup>1</sup> Exs. 1, 2.  
<sup>2</sup> Ex. 4.  
<sup>3</sup> Ex. 5.  
<sup>4</sup> Ex. 6.

were sent to Ms. L's mailing address of record, which was her parents' mailing address in No Name.

Ms. L's parents went to the Division's offices in person in late February 2016 and delivered information regarding her application. Ms. L also faxed and provided information to the Division. For example, the Division received her 2015 audit form on March 2, 2016.<sup>5</sup> Ms. L also requested an informal appeal. The informal appeal request form stated on its face that it must be received or postmarked by March 20, 2016. The informal appeal request was hand-filed with the Division on June 8, 2016, and it was not signed. The informal appeal request form also provides that Ms. L's email address is "[removed]@yahoo.com."<sup>6</sup> Ms. L's parents' first names are P and U. Their email address is "[removed]@yahoo.com."<sup>7</sup> However, on another document filed by Ms. L, her email address is given as "[removed]@hotmail.com."<sup>8</sup> The Division denied Ms. L's informal appeal request as having been untimely filed.<sup>9</sup>

Ms. L was asked several times at hearing regarding whether she had filed her informal appeal request earlier than June 8, 2016, or if there was a reason for the delay in filing the informal appeal request. She never answered the question about the informal appeal request. Instead, she stated repeatedly that she had tried on multiple occasions to provide the Division with information about her original application. She also testified that Ms. Cason, a Division lead technician, told her or her family that she "would take care of it" or words to that effect, which she took as meaning that her PFD application would be approved. Ms. Cason testified that she remembered speaking to Ms. L's mother, but not Ms. L, and telling her that she "would take care of it" or similar words, meaning instead that she would follow up on Ms. L's application.

### **III. Discussion**

There is a two stage administrative appeal process when a PFD application is denied. At the first stage, the applicant requests an informal appeal, which provides an opportunity to have

---

<sup>5</sup> Ex. 8.

<sup>6</sup> Ex. 9, p. 1.

<sup>7</sup> See Ex. 15, p. 1 (2014 Adult Certification Form signed by P L); Ex. 15, p. 3 (U L's 2015 Adult Application Form).

<sup>8</sup> Ex. 2, p. 1.

<sup>9</sup> Ex. 10.

the Division review the denial and determine if it should be reversed.<sup>10</sup> The deadline for filing the request for an informal appeal

must be filed with the permanent fund division within 30 days after the date of the notice of assessment or disallowance, unless the individual demonstrates a reasonable cause for the failure to file within this period.<sup>11</sup>

Ms. L was sent notice her application was denied on February 19, 2016. Her informal appeal request was due thirty days thereafter, by March 20, 2016. She undisputedly did not file her informal appeal request until June 8, 2016. This was 80 days after the March 20 due date. However, the regulations allow the administrative law judge to relax appeal deadlines “if it appears . . . that strict adherence to the deadline . . . would work an injustice.”<sup>12</sup>

Factors involved in assessing whether strict adherence to the deadline should be relaxed involve whether the Division confused the applicant regarding deadline issues and whether the applicant has a good chance in succeeding on the merits.<sup>13</sup> As the party who requested the hearing, Ms. L has the burden of proof.<sup>14</sup>

The evidence shows that Ms. L was explicitly advised in writing of the deadline for filing her request for an informal appeal. Even though she was in Colorado, the Division’s notices were sent to her mailing address of record, which was her parents’ mailing address. Ms. L’s parents were in contact with her and acted on her behalf, as demonstrated by their going to the Division and submitting documents on her behalf, *i.e.*, Ms. L had notice of her appeal rights and deadlines. Despite having valid notification of the appeal deadlines, Ms. L chose not to avail herself of that option, instead choosing to continue to provide the Division with information regarding her original application.

When Ms. L chose to exercise her appeal rights, her informal appeal request was untimely by 80 days. It should also be noted that it appears highly likely that Ms. L did not herself file the informal appeal request, but rather that her parents filed it for her, given that the form is not signed by Ms. L and the email address provided on the form is “[removed]@yahoo.com” rather than “[removed]@hotmail.com.” Ms. L’s testimony did not

---

<sup>10</sup> 15 AAC 05.010; 5 AAC 05.020(a).

<sup>11</sup> 15 AAC 05.010(b)(5).

<sup>12</sup> 15 AAC 05.030(k).

<sup>13</sup> See *In re V. D.*, OAH Case No. 14-0943-PFD (Commissioner of Revenue, 2014); *In re K. B.*, OAH Case No. 13-1426-PFD (Commissioner of Revenue, 2014). (Ex. 12).

<sup>14</sup> 15 AAC 05.030(h).

provide any information showing that she had appealed earlier. Her testimony regarding discussions with Ms. Cason does not establish good cause for a delay, given that it is improbable that Ms. Cason would have promised that her application would be approved. There was also no evidence presented showing that requiring Ms. L to comply with the deadlines would work an injustice. The evidence therefore shows that Ms. L did not meet her burden of proof.

**IV. Conclusion and Order**

Ms. L did not establish good cause for relaxing the deadlines for filing her informal appeal request. The Division’s communications regarding the filing deadlines were sent to the correct address; Ms. L did not demonstrate that the delay was reasonable; and strict adherence to the deadlines does not work an injustice. IT IS HEREBY ORDERED that the Division’s denial of Ms. L’s informal appeal request as having been untimely filed is AFFIRMED.

DATED this 25th day of November, 2016.

*Signed*  
\_\_\_\_\_  
Lawrence A. Pederson  
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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 20th day of December, 2016.

By: *Signed*  
\_\_\_\_\_  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge/OAH  
Title

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