

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

In the Matter of)	
)	
D E)	OAH No. 16-1348-PFD
)	Agency No. 2014-028-7176
<u>2014/2015 Permanent Fund Dividends</u>)	Agency No. 2015-061-1990

DECISION

I. Introduction

After the Permanent Fund Dividend (PFD) Division learned that D E had registered to vote in New Mexico, it denied and assessed (sought to recover) her previously-paid 2014 dividend and it denied her pending application for a 2015 dividend. The two denials occurred in August and October of 2015, respectively. More than six months after each of these events, Ms. E initiated the appeal process. The Division rejected the appeals as untimely. Ms. E requested a formal hearing by correspondence. The Division moved to dismiss on the basis of untimeliness. The Division’s motion is granted because Ms. E did indeed miss the deadlines to appeal, and she has not shown reasonable cause for doing so.

II. Facts

The facts in this case are entirely undisputed. Ms. E was an Alaska resident receiving PFDs for more than a decade prior to 2014.¹ At times, she has been on allowable absences as a military dependent or student.

The Division initially paid her 2014 dividend, but then denied it and assessed it for repayment over a voter registration issue.² (In general, a person who registers to vote in another state is not eligible for a PFD, and Ms. E had done this in New Mexico in 2014, just before she applied for her 2014 PFD.³) The denial and assessment decision was issued on August 14, 2015. It stated that if she disputed the decision, Ms. E had “30 days from the date of this letter to file a Request for Informal Appeal.”⁴ Also included was an appeal form showing a deadline of “SEP 13 2015.”⁵

¹ Ex. 34.

² Ex. 6.

³ See Ex. 8, p. 2; Ex. 23; Ex. 32.

⁴ Ex. 6. Oddly, it also mentioned, elsewhere, a deadline of “April 10, 2015,” a date that had already passed. Ex. 6, p. 2. This was plainly a typographical error.

⁵ Ex. 29. In the absence of any claim to the contrary, I am accepting the Division’s representation that this is a true image of the appeal form sent with the denial/assessment letter. It is puzzling, however, that it does not appear in the original set of images from the August 2015 correspondence.

Ms. E says—and I accept for purposes of this motion to dismiss—that she received the August 14 letter but “it had been soaked in fish-smelling stuff” and she was unable to keep the appeal form.⁶ She emailed the PFD Division on October 8, 2015, asking for an appeal form.⁷ The same day, the Division sent her a new one by return email, with a cover note stating:

Attached to this email is a copy of your denial letter for the 2014 PFD (last year) and your Request for Informal Appeal form. As it is past your appeal deadline and your appeal rights have expired, you will also need to include a detailed explanation to demonstrate reasonable cause as to why the Division should accept your late filed appeal, along with the proof requested in the denial letter.⁸

Nothing more seems to have been heard from Ms. E for nearly six months until, in late March of the following year, she emailed a document relating to her voter registration and spoke with the Division on the phone.⁹ She was again sent an appeal form and, on April 9, 2016, she submitted a request for informal appeal. The request for informal appeal form she submitted related to a different dividend (her 2015 dividend, discussed below), and it bore an appeal deadline of November 15, 2015.¹⁰ Nonetheless, she designated it as an appeal of the denial of the 2014 dividend.

Meanwhile, on October 16, 2015, the Division denied Ms. E’s 2015 dividend for the same reason it had denied and assessed her 2014 dividend.¹¹ The denial was sent to the address she had provided, and gave her an appeal deadline of November 15, 2015. The appeal form sent in on April 9, 2016 could be interpreted to relate to *this* denial as well, except that Ms. E had written “2014” as the “PFD Year” on that form. Ms. E does, however, seem to have thought she had initiated an appeal of both denials using the one form. In telephone conversations over the summer of 2016,¹² the Division indicated she needed to send an additional form for 2015, and in response she sent in another appeal form with 2015 as the designated “PFD Year.” That form was signed on July 27 and reached the Division on August 1, 2016.¹³

⁶ Ex. 7, p. 2. In its briefing, the Division suggests that this explanation was first advanced in July of 2016. Position Statement at 3. The Division is mistaken—Ms. E told them about the problem in October of 2015, in her first contact with them about the denial.

⁷ *Id.*

⁸ Ex. 7, p. 1.

⁹ Ex. 31. The emailed document is at Ex. 23.

¹⁰ Ex. 8.

¹¹ Ex. 24.

¹² Ex. 31.

¹³ Ex. 26.

The Division denied the appeals as too late.¹⁴ This formal appeal followed. In her formal appeal form, Ms. E did not supply any additional explanation of why she had initiated the informal appeal process so late.¹⁵ She asked for a hearing by written correspondence only.

By notice dated November 21, 2016, Ms. E and the PFD Division were given until December 21, 2016 to send any additional documents or correspondence for consideration in this formal appeal. Both were given until January 17, 2017 to respond to any documents received from the other. The Division filed a position statement combined with a motion to dismiss. Ms. E filed nothing.

III. Discussion

The appeal process for a PFD must be initiated by a request for an informal appeal, which can then be followed, if necessary, by a formal appeal.¹⁶ A person wishing to appeal the denial of a dividend ordinarily must initiate this appeal process within 30 days of the day the Division gives notice of its denial of the application.¹⁷ Ms. E filed her first appeal paperwork nearly eight months after the Division denied and assessed her 2014 dividend, and nearly six months after the denial of her 2015 dividend.

The 30-day appeal window does not apply if the applicant “demonstrates a reasonable cause for the failure to file within this period.”¹⁸ Similarly, the administrative law judge may waive the appeal deadline if adherence to it “would work an injustice.”¹⁹ The issue in this case is whether Ms. E, who has provided only a minimal explanation and made no effort to flesh it out during the formal appeal process, has “demonstrate[d]” a reasonable cause for being late, or if adhering to the deadline in her case creates an injustice.

The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past. Historically, the appeal deadlines have only been set aside in compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

In re N., OAH No. 05-0595-PFD (2006): Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. Six-month delay in filing appeal not excused.

¹⁴ Ex. 9, 27. The denials were also based on other grounds.

¹⁵ Ex. 28.

¹⁶ 15 AAC 05.010(h).

¹⁷ 15 AAC 05.010(b)(5).

¹⁸ *Id.*

¹⁹ 15 AAC 05.030(k).

In re G., Caseload No. 030739 (2004): Applicant missed deadline because he failed to give Division a change of address. One year delay in appeal not excused.

In re H., Caseload No. 040315 (2004): Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. Two-and-a-half month delay in properly initiating appeal was excused.

In re S., Caseload No. 040154 (2004): Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. Six-month delay in properly initiating appeal was excused.

*In re C.D.M., OAH No. 05-0412-PFD (2005):*²⁰ Applicant was one month late in initiating his informal appeal of a denial of his 2004 PFD, and had no explanation. Delay not excused.

*In re S.Z., OAH No. 05-0281-PFD (2005):*²¹ Applicant was eleven months late in initiating her informal appeal of a denial of her 2003 PFD. She had not seen the denial letter and had not noticed anything was amiss. Delay not excused because “applicants have some responsibility to keep informed.”

*In re A.R., OAH No. 16-1351-PFD (2017):*²² Application for two minors had technical error that Division could have corrected informally, but Division required applicants’ father to appeal before it would address the problem. Applicants’ family was making military move during the appeal period, and neglected to make reliable arrangements for prompt mail forwarding. Appeal papers were 34 days late, but applicant’s father could reasonably have believed that a later deadline applied due to confusion relating to multiple denials. Late filing was excused.

In general, waivers have been available where confusing circumstances, particularly if contributed to by the Division, were a factor in the delay in starting an appeal, and even then the amount of extra time granted has not been unlimited. An applicant’s busy life or her neglect to inform herself about her appeal rights is not ordinarily a basis to waive the appeal deadline.

In this case, whether or not she could bear to read the 2014 denial papers she received in August of 2015 (due to the fish smell), Ms. E unquestionably knew on October 8, 2015 that her appeal of that denial was already overdue, and she had a fresh appeal form in her e-mail inbox. Nonetheless, she waited another half year to appeal. These circumstances do not establish “reasonable cause” for her delay, nor create a situation where applying the law to her creates an “injustice.”

The same is true of the denial of her 2015 dividend. That denial was sent to Ms. E immediately after the October 8, 2015 email exchange, which mentioned that her 2014 appeal was late and should have reminded Ms. E of the importance of appealing promptly. I accept that

²⁰ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

²¹ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

²² Publication pending.

her April 9, 2016 appeal form, even though it said “2014 PFD”, may have been a reasonable attempt to open an appeal on both dividends (the 2015 dividend having been denied for the same reason as the 2014 PFD). But April 9, 2016 was almost six months after the 2015 dividend had been denied. Ms. E has no explanation at all for that delay.

IV. Conclusion

Ms. E did not timely appeal the denial and assessment of her 2014 PFD, nor the denial of her 2015 PFD application. Her appeal is therefore dismissed.

DATED this 24th day of January, 2017.

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 24th day of February, 2017.

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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