

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

In the Matter of)		
)		
A J. Q and)		
L M. Q (minors))	OAH No.	16-1351-PFD
)	Agency Nos.	2016-058-8490
<u>2016 Permanent Fund Dividend</u>)		2016-060-2172

DECISION

I. Introduction

A and L Q are young children who lived in Alaska during 2014 and 2015 and received 2015 Permanent Fund Dividends (PFDs).¹ When their father applied on their behalf for 2016 dividends, however, their applications were denied owing to a technical problem regarding sponsorship (a problem that has since been resolved). The father initiated an appeal of the denials, but he did so after the deadline for appealing. The PFD Division rejected the appeal as untimely. In this second-level appeal, the Division moved for dismissal on the basis of the initial untimeliness. A short evidentiary hearing was held on the motion to dismiss.

Although this is a close case, Mr. Q did demonstrate sufficient reasonable cause for the delay in initiating his children’s appeals that the deadline should be relaxed. The Division’s untimeliness decision is reversed and the appeals are accepted. Further, since the underlying sponsorship issue has been resolved, the appeals are sustained. The children’s dividends should be paid through the substitute sponsor.

II. Facts

X and N Q have three young children: C, A, and L.² In 2016, timely PFD applications were filed for all three children, signed by both parents but listing X Q as the sponsor.³

X Q is on active duty in the U.S. Army. Beginning in June of 2013, he was stationed at No Name, Alaska. In February of 2016 he received orders transferring him to a new post in Arizona. In late April, he, N, and the three children left Alaska, taking a 60-day leave in Colorado and then moving on to the new post.⁴

¹ See Ex. 1, pp. 2 and 4.

² Testimony of X Q.

³ Ex. 7, pp. 1-2; hearing testimony.

⁴ Q testimony. Note that the Qs did not necessarily end their residency with this move; they may now be on allowable absence, but still residents. See AS 43.23.008(a)(3).

While in Alaska, the Qs established residency, but X Q did not do so until early 2015. Thus, when the 2016 dividend came around, he was not legally able to serve as a sponsor.⁵ The Division ascertained this in a telephone conversation with Mr. Q on May 13, 2016, and it decided on that date to deny the children’s applications for lack of an eligible sponsor.⁶ The Division also told Mr. Q he could “change sponsorship to mother through appeal process.”⁷ However, the denial notices, which would enable him to start that process, were not sent out right away. Two of them—for A and L—were mailed on June 3.⁸ The third—for C—was mailed on July 8.⁹

Meanwhile, the Qs were traveling, they had not given the Division a new mailing address, and they had made what turned out to be inadequate arrangements for mail forwarding.¹⁰ On July 13, Mr. Q called the Division to say that he had not received any denial letters yet.¹¹ He was told that A’s and L’s had already been issued, and copies of those were emailed to him the same day.¹² He was also told that C’s was coming to him in the mail, and that he could send in all three appeals together.¹³ The deadline for appealing the first two denials had just passed, but there is no indication—in Mr. Q’s recollection or in the Division’s written record—that this was pointed out or that Mr. Q was urged to send those appeals in right away.¹⁴

Mr. Q mailed requests for informal appeal for all three children by Priority Mail on August 6, 2016, which was one day before the postmark deadline that would have been printed at the top of the appeal form accompanying C’s denial notice.¹⁵ The Division granted C’s appeal, substituted in N Q as C’s sponsor, and paid her dividend.¹⁶ However, it rejected the other two appeals as untimely.¹⁷ This formal appeal followed.

⁵ See 15 AAC 23.113(c).

⁶ Ex. 7, pp. 1-2.

⁷ *Id.*

⁸ Ex. 2, pp. 1 and 3.

⁹ Testimony of Peter Scott.

¹⁰ Q testimony.

¹¹ Ex. 7, p. 1.

¹² Q testimony; Ex. 3.

¹³ Q testimony. Mr. Q was a credible witness who testified frankly, often against his own interest. His account of the conversation with the PFD technician fitted with the documentary record and was believable.

¹⁴ Cf. Ex. 3, Ex. 7.

¹⁵ Ex. 4, pp. 5-6. Although C’s denial notice and appeal form are not in the record supplied by the Division, the date that would have been printed on the appeal form can be surmised from Division practice.

¹⁶ Scott testimony.

¹⁷ Ex. 5.

III. Discussion

By law, the period to appeal a denial is “30 days after the date of the notice of . . . disallowance.”¹⁸ The denials for A and L went out on June 3, 2016, and the 30th day from those denials was July 3. A PFD appeal filing is considered effective the date it is mailed,¹⁹ and Mr. Q mailed the appeal papers on August 6, making them about 34 days late.

Mr. Q can be excused from the deadline if he shows “reasonable cause.”²⁰ In the same vein, a parallel regulation allows the administrative law judge to “waive” this deadline if strict adherence to it would “work an injustice.”²¹ The length of the delay is one factor that is considered when deciding whether strict adherence to the filing deadlines would work an injustice.²² Here, the delay in filing was fairly short; most untimely appeal cases involve longer delays. Hence, the showing needed for relaxation of the deadline is not as onerous in Ms. Q’s case as it would be for someone who missed the deadline by months or years.

Several factors make the case for relaxing the deadline in this case more compelling. First, the appeal is actually on behalf of two young children, who bear no blame for this situation. Second, while the children’s father was somewhat negligent in embarking on his change of post without setting up a good forwarding arrangement, it is understandable that a military family in the midst of a transfer might navigate the address-change process less than perfectly. Mr. Q did pay attention sufficiently that he contacted the Division on his own initiative on July 13 to check on the status of the denials he was expecting. Third, once he received the three denials and appeal forms on July 13, it was not unreasonable for Mr. Q to think the latest appeal deadline on the forms would apply; this is especially so in light of the Division representative’s suggestion that he send the appeals in together, and the lack of any mention that this was urgent. Had he been told to act immediately, Mr. Q could have appealed only ten days after the deadline for A and L.

Finally, this is an instance where the Division seems to have known, *before* requiring the Qs to appeal, that the sponsorship problem could readily be solved and that the appeals would therefore be well taken.²³ The evidence taken at the hearing did not establish why the Division would require a member of the public to appeal in the first place in that situation. In any event, requiring the Qs to appeal seems to have been a mere technical formality, more analogous to a process of gathering

¹⁸ 15 AAC 05.010(b)(5).

¹⁹ 15 AAC 05.010(c).

²⁰ 15 AAC 05.010(b)(5).

²¹ 15 AAC 05.030(k).

²² See *In re S.O.*, OAH No. 09-0497-PFD (Comm’r of Revenue 2010); *In re J.J.G.*, OAH No. 09-0363-PFD (Comm’r of Revenue 2009).

²³ Ex. 7, 2016/05/13 entries.

backup documentation than to a true contested appeal. The Division often works with applicants over a period of many months to gather backup documentation.

In light of these factors, I find that Mr. Q has made an adequate showing for a relaxation of the informal appeal deadline in A's and L's cases.²⁴

IV. Conclusion

The denials of the 2016 PFD applications for A J. Q and L M. Q are reversed. This case is remanded to the PFD Division for substitution of N Q as the children's sponsor and payment of the dividends.

DATED this 14th day of December, 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 12th day of January, 2017.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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

²⁴ In moving to dismiss this appeal, the Division relies on *In re C.D.M.*, OAH No. 05-0412-PFD (Comm'r of Revenue 2005), in which the informal appeal deadline was not relaxed for an individual whose appeal was late by about the same amount as the Q appeals. However, the appellant in that case did not oppose dismissal and did "not provide[] an explanation" at all for his late appeal. Mr. Q did oppose dismissal, did provide an explanation, and had special circumstances that made the lateness excusable.