

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

In the Matter of	)	
	)	
B O SR., H O	)	OAH No. 17-0289-PFD
and A O (minor)	)	Agency No. 2016-067-2865
_____	)	

**DECISION AND ORDER**

**I. Introduction**

B O Sr., H O (his wife), and A O (their minor son) each applied for a 2016 Permanent Fund Dividend (PFD) on April 22, 2016. The Permanent Fund Dividend Division (Division) denied these applications because they had been filed after the March 31, 2016 deadline. The Request for Informal Appeal forms to appeal the denials were due by June 19, 2016. However, the O family did not file their respective informal appeal forms until September 19, 2016.

The Division issued an informal appeal decision for B O, Sr. on March 10, 2017. The Division also issued a separate informal appeal decision for H O and an informal appeal decision for A O on that same date. On March 16, 2017, the O family filed their respective requests for a formal hearing.<sup>1</sup>

The Division moved to dismiss the appeal request because it was untimely. A brief evidentiary hearing was held on the motion to dismiss on May 3, 2017. Mr. and Mrs. O appeared telephonically and testified in their own behalf. The Division also appeared telephonically and was represented by Peter Scott, a PFD Specialist.

**II. Facts**

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

Division records reveal that Mr. O has filed, and received, a PFD since the early 1980s.<sup>2</sup> The O family, who currently lives in Town A, has previously received paper copies of the PFD application in the mail in or around January. However, they did not receive those applications in the mail this year.<sup>3</sup>

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<sup>1</sup> See Exh. 5. E S. O also was included on this appeal form. The Division in the presentation of its case noted that E O, B O's brother, had a good reason for the delay in filing his PFD application, since he had been injured in a snow machine accident. Consequently, the Division has paid the 2016 PFD to E O so he was no longer part of this appeal and did not take part in the evidentiary hearing.

<sup>2</sup> See Exh. 1, at p. 3.

<sup>3</sup> Mr. O testified that he had not received his mail consistently since 2016 after he no longer had a mailbox at the Town B Post Office. Although PFD applications are also available on line, Mr. O testified that they have no usable computer at home.

Towards the end of February of 2016, the O family began temporarily residing at their spring camp, in a remote area near the village of Village C, Alaska. According to the Division, 300 adult paper PFD applications and 200 child paper PFD applications were sent to the village of Village C at the beginning of 2017, so paper applications should have been available there.

The O family returned to Town A sometime in April of 2016. At that time, Mr. O realized that they had not filed their 2016 PFD applications. Mr. O obtained a paper copy of the 2016 PFD application at the Town B library. He and Mrs. O signed their respective applications and one for their son on April 22, 2016.<sup>4</sup> The Division received these applications on April 25, 2016.<sup>5</sup>

The Division notified each member of the O family on May 20, 2016 that they were not eligible for the 2016 PFD because their respective applications had not been received or postmarked on or before the filing deadline on March 31, 2016.<sup>6</sup> The Notice of Denial for each member of the O family further stated that they had “30 days from the date of this letter to file a Request for Informal Appeal” and that the appeal form “must be submitted or postmarked by June 19, 2016.”<sup>7</sup>

Mr. and Mrs. O signed the appeal forms for themselves and their son on September 19, 2016.<sup>8</sup> The Division received them on September 20, 2016, which was 93 days after the appeal deadline.<sup>9</sup> Mr. O explained that the appeal forms had gotten misplaced in their house because his daughter didn’t put the appeal paperwork in a place where he could see it.

### **III. Discussion**

The O family’s appeal requests were untimely. They were filed more than three months after the passing of the thirty-day deadline, which ended on June 19, 2016. However, the regulations permit a hearing officer to “waive any deadline established in the [appeal regulations] if it appears to the officer that strict adherence to the deadline . . . would work an injustice.”<sup>10</sup>

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<sup>4</sup> Exh. 1, at pp. 1, 4 & 7.

<sup>5</sup> Id.

<sup>6</sup> Exh. 2, at pp. 1, 3 & 5. A’s Notice of Denial also stated that he was ineligible because the adult (Mr. O) who filed for the child was not eligible for the 2016 PFD. *See id.*, at p. 5.

<sup>7</sup> Exh. 2, at pp. 1, 3 & 5.

<sup>8</sup> Exh. 3, at pp. 1, 3 & 5.

<sup>9</sup> Id.

<sup>10</sup> 15 AAC 05.030(k). The Division at the evidentiary hearing noted that A O will be able to receive the 2016 Dividend when he turns 18.

Waivers of the appeal deadline have only been granted in particularly compelling circumstances where an appellant can demonstrate “reasonable cause” for filing their Request for Informal Appeal forms after the required due date.<sup>11</sup> Here, the appeal forms were simply misplaced in the O home. This circumstance does not create a sufficient excuse to justify a delay of more than three months in filing the appeal forms. Moreover, granting the Division’s motion will not work an injustice since the underlying 2016 PFD applications were not filed by the requisite March 31, 2016 deadline.<sup>12</sup>

**IV. Conclusion**

The request for the respective informal appeals of Mr. and Mrs. O and their son, A, were filed after the thirty-day deadline established in 15 AAC 04.030(a). The O family has not shown “reasonable cause” for this delay and did not show that strict adherence to the appeal deadline would work an injustice. Accordingly, the Division’s motion to dismiss the appeal is granted. No further proceedings will be scheduled in this matter and the Division’s denial of the 2016 applications of Mr. O, Mrs. O, and A O will stand.

**V. Order**

IT IS HEREBY ORDERED that the motion of the Permanent Fund Dividend Division to dismiss the appeals of B O, Sr., H O, and A O is GRANTED.

DATED: May 5, 2017.

By: Signed  
Kathleen A. Frederick  
Chief Administrative Law Judge

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<sup>11</sup> See OAH No. 06-0742-PFD, at p. 4.

<sup>12</sup> Because the O family’s respective PFD applications were filed after March 31 and because these late filings do not fall within either of the filing deadline exceptions, the Division is legally required to reject these late-filed applications.

## 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 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 31st day of May, 2017.

By: Signed  
Signature  
Kathryn A. Swiderski  
Name  
Administrative Law Judge  
Title

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