

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

In the Matter of)	
)	
E E M)	OAH No. 17-0629-PFD
_____)	Agency No. 2014-054-9213

DECISION

I. Introduction

E E M’s applications for Permanent Fund Dividends in 2014 and 2015 were denied by the Permanent Fund Dividend Division of the Alaska Department of Revenue. Ms. M did not appeal within the timeline allowed under law. She did eventually file an appeal, arguing that because her dividends had been garnished, she did not know they had been denied until the garnishor informed her. The evidence in the record, however, indicates that Ms. M likely did have notice of the denial. Nothing in the record establishes reasonable cause for the long delay that occurred between the notice and the denial. Therefore, the Division’s motion to dismiss the late-filed appeal is granted, and the denial is affirmed.

II. Facts

E E M is a long-term resident of Alaska. She received a permanent Fund Dividend from 1985-2013.¹

Ms. M’s difficulties with her dividend began, however, in 2013. In that year, she apparently did not apply. The record does not reflect why. Ms. M testified that she never left the state for any significant time period, so we know that her reason for not applying in 2013 was not related to an absence from the state.²

The next year, 2014, Ms. M did apply. On her 2014 application, however, she checked the box that indicated she had received her 2013 dividend.

The Permanent Fund Dividend Division of the Department of Revenue noted the discrepancy in Ms. M’s 2014 application. It requested additional information. Ms. M did not respond. Because of the failure to respond, the Division denied the application. Ms. M did not appeal within 30 days, so the denial became final.³

¹ Division Exhibit 1.

² M testimony.

³ Division Motion to Dismiss Late Appeal.

When she applied for her dividend in 2015, Ms. M knew that she had not received a dividend in 2014, and appropriately checked the box that indicated she had not received a dividend in 2014. For the question that asked, “When did your most recent Alaska residency begin?”, however, she wrote down “2-14-2015”⁴ This answer was inconsistent with the rest of her application, which clearly indicated that her residency began in 1985.⁵ No doubt, Ms. M made a simple error, perhaps reflecting a date that she moved from Anchorage to Town Z. Yet, because a residency that began in February 2015 would make a person ineligible for a 2015 dividend, and because that is what Ms. M said, the application was denied. Ms. M did not appeal within 30 days, so this denial also became final. Had Ms. M appealed either or both of these denials, the Division could have fixed the errors, and granted the dividends.

Ms. M has had a difficult life.⁶ She is a widow.⁷ She has health problems.⁸ She has moved between Town Y and the Anchorage/Town Z area.⁹ She has had difficulties getting her mail.¹⁰ In Town Y she experienced a very traumatic episode in which her door was kicked down by a violent individual who threatened her.¹¹ She has children for whom she has been obligated to pay child support.¹² The Child Support Services Division has garnished her dividends to help pay her child support obligation.¹³ She has struggled in her relationships with her children.¹⁴

At some point after the denial of one or both of the dividends at issue in this appeal, Ms. M began having some difficulty with Child Support Services Division, which apparently had notified her of arrearages.¹⁵ In August 2016, K X, a close friend to whom Ms. M granted power of attorney, discovered that the arrearage was due at least in part to the fact that Ms. M’s dividends had not been paid. Knowing that Ms. M was an eligible Alaska resident, who consistently applied for her dividends, in November 2016, Ms. X filed requests for informal conferences on behalf of Ms. M, asking to have the denials of the 2014 and 2015 dividend

⁴ Division Exhibit 9 at 3.

⁵ *Id.* (indicating, e.g., no absences from Alaska and that she moved belongings to Alaska in 1984 and her employment in Alaska began in 1985).

⁶ M, X testimony.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ X testimony.

overturned.¹⁶ The denial was affirmed at informal conference, based solely on the issue that the appeals were not timely. Ms. X then requested a formal hearing, and the matter was referred to the Office of Administrative Hearings. A hearing on the appeals was held on July 26, 2017.

III. Discussion

The law requires that an appeal from a denial of a Permanent Fund Dividend must be filed with the Division within 30 days after the date of notice of denial.¹⁷ The law permits the Division to accept a late-filed appeal, however, if “the individual demonstrates a reasonable cause for the failure to file within this period.”¹⁸ Similarly, in a formal hearing, “The hearing officer may waive any requirement or deadline established in 15 AAC 05.010 - 15 AAC 05.030 if it appears to the officer that strict adherence to the deadline or requirement would work an injustice.”¹⁹

The Division agrees that if Ms. M had timely filed her appeals, she would have been able to prove that she was eligible for her dividends. Thus, the only issue is whether she had reasonable cause for her late filings or whether denying her dividend would work an injustice.

Here, the Division points out that Ms. M’s 2014 appeal was filed 629 days after the notice of denial—599 days late. The 2015 appeal was filed 307 days after the notice of denial—277 days late.

Ms. X argued that Ms. M had reasonable cause for the delay because she was not aware of the denials. Because the money always went directly to Child Support, she never saw the money, and had no reason to inquire about whether her dividends were paid. Further, Ms. X testified that Ms. M had a terrible time with her postal service, both in Town Y and in Town Z. She explained that rural mail service is often deficient. In Town Z, Ms. M’s mail is not delivered to Ms. M’s house, but to a roadside box. Because of a shortage in available lockboxes, however, Ms. M’s box is actually a converted mail-drop slot, which leads to even more problems, particularly when the carrier is a new or a substitute.²⁰ Ms. X explained that only after Child Support began its inquiry, and she started helping Ms. M to get to the bottom of the missing child support, did Ms. M learn that her 2014 and 2015 dividends had not been paid. Once this was

¹⁶ Division Exhibit 8.

¹⁷ 15 AAC 05.010(b)(5)

¹⁸ *Id.*

¹⁹ 15 AAC 05.030(k).

²⁰ X testimony.

confirmed in August 2016, Ms. X testified that she filed the appeals as soon as her health (she also has health issues) would permit.²¹

The record shows, however, that this version of the facts is not quite accurate. On Ms. M's 2015 dividend application, Ms. M correctly stated that she had not received a dividend in 2014.²² The date of this application was March 23, 2015. That means that on March 23, 2015, she knew that she had not received the 2014 dividend. Even if true that Ms. M had problems with her postal service in Town Y, and even if true that she only learned of the dividend denial from Child Support, nothing in the record or the argument made by Ms. X establishes reasonable cause for Ms. M waiting more than 30 days after March 23, 2015 to file an appeal for her 2014 dividend.

With regard to the 2015 dividend, because the explanation for the 2014 delay is not accurate, I am not persuaded that the explanation for the delay in appealing the 2015 dividend is accurate. In December 2015, Ms. M was then living in Town Z, and the address the Division used to send the denial letter was the Town Z address that remains her address today.²³ Ms. M admitted that she may have received the denial letter, and may still have it in her records.²⁴ She did not, however, attempt to locate the letter or otherwise prove that she did not receive it. Given that the letter was apparently sent by U.S. mail, I am not persuaded that Ms. M did not have notice well before August 2016 that her 2015 dividend had been denied.²⁵ Therefore, I see no reasonable cause for waiting until November 2016 to appeal a denial that was sent to her in December 2015.

Although I understand that Ms. M has been having a difficult time, a person bears some responsibility for ensuring that she receives a dividend. Here, the problem with the 2015 application was due to an unfortunate mistake made by Ms. M. Had Ms. M filed a timely appeal, it could have been easily cleared up. Deadlines and finality are very important in legal processes, however, and the Division's decision became final when she did not file a timely

²¹ *Id.*

²² Division Exhibit 9 at 1.

²³ Division Exhibit 12 at 1.

²⁴ M testimony.

²⁵ *See, e.g., Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974) (holding that when properly addressed and properly stamped mail is deposited in United States mail, it is presumed that this mail has been delivered.) If the Division had provided testimony or affidavit that it had procedures in place to ensure that the letter had been properly mailed, no further inquiry would be necessary in the absence of evidence that it was never received. The Division did not, however, prove that the letter had been mailed.

appeal. In addition, the law must treat people fairly and evenly. Given that other people who failed to appeal on time have been denied dividends, in order to be treated differently, Ms. M must come forward with evidence that her case is different.²⁶ Because she has not done so, she had not met her burden of proving that she had reasonable cause for her late filing or that dismissing her appeal would work an injustice.

IV. Conclusion

The Division's motion to dismiss late-filed appeal is granted. The denial of Ms. M's 2014 and 2015 Permanent Fund Dividends is affirmed.

DATED this 28th of July, 2017.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Revenue and under the authority of AS 44.64.060(e)(1), I adopt 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 30th day of August, 2017.

By: Signed
Name: Jessica L. Srader
Title: Administrative Law Judge

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

²⁶ See, e.g., *In re VD*, OAH No. 14-0943-PFD (Dep't of Rev. 2014); *In re SNT*, OAH No. 14-1841-PFD (Dep't of Rev. 2016).