

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

| | | |
|------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| D T |) | OAH No. 17-1075-PFD |
| _____ |) | Agency No. 2016-063-5829 |

DECISION

I. Introduction

The Permanent Fund Dividend Division denied D T’s application for a 2016 Permanent Fund Dividend (PFD) after Ms. T failed to respond to the division’s request for additional information showing her eligibility. More than five months after the division issued its denial letter, Ms. T initiated the appeal process. The division rejected the appeal as untimely. Ms. T requested a formal hearing.

Prior to the hearing, the division moved to dismiss the appeal on the basis of untimeliness. Oral argument on the division’s motion was combined with the evidentiary hearing, which took place by telephone on November 27, 2017. Ms. T represented herself and testified on her own behalf. Bethany Thorsteinson represented the division. All submitted documents were admitted to the record.

The division’s motion is granted because Ms. T missed the deadline to appeal by a significant margin, 130 days, and she has not shown reasonable cause for doing so.

II. Facts

D T has lived at the same address in No Name City since May 2014.¹ She received each PFD distribution from 2010 through 2015, and she received the 2017 PFD.²

In March 2016, she timely submitted her application for the 2016 PFD, designating her home address as her place of residence as well as her mailing address.³ On the application, Ms. T checked the “YES” box for Question 3.A., indicating that she had been away from Alaska more than 90 days during the 2015 qualifying year.⁴ However, she did not follow the application’s instructions to provide specific dates of absence and explain the reasons for them.⁵ She also did not send in Parts B and C of the Adult Supplemental Schedule, as the application required of individuals who had been absent more than 90 days.

¹ T testimony.
² Exhibit 10.
³ Exhibit 1.
⁴ Exhibit 1, p. 1.
⁵ Exhibit 2, p. 2.

On December 2, 2016, the division sent Ms. T a letter, informing her that it could not finish processing her application until it received additional information.⁶ It sent the letter to the mailing and physical address Ms. T provided in her application. The letter specified the information the division still required. It asked Ms. T to confirm whether she was out of the state more than 90 total days during 2015. If so, it asked for absence dates and an explanation for each absence. It also asked her to submit a 2016 Audit Form.

The request for information set a 30-day deadline to respond. The letter indicated in bold type: “Complete information must be received or postmarked by January 1, 2017 or this application may be denied.”⁷ Ms. T did not respond.

Since Ms. T had not shown she was eligible for the 2016 PFD, the division denied her application on February 10, 2017.⁸ It mailed the denial letter to the same address of record. The Notice of Denial informed Ms. T that she could initiate an appeal by submitting a Request for Informal Appeal within 30 days, or by March 12, 2017. The letter again requested information that could demonstrate her eligibility for the 2016 PFD, including a completed 2016 Audit Form and an explanation for any absences.⁹

Ms. T did not respond by the March 12, 2017 deadline. In late March 2017, with computer assistance from her husband, she timely submitted her 2017 PFD application via online submission.¹⁰ When she was in her online account, she did not check the status or payment history for her 2016 dividend, though it was available there.

In mid-July 2017, Ms. T received a letter from the division requesting additional information to show eligibility for the 2017 PFD. According to Ms. T, she had no idea there were problems with her 2016 application until she received this letter. She did not recall receiving either of the division’s prior letters, which she believes were not delivered. During the time in question, however, she was very busy caring for her ailing 93-year-old mother. She had assumed her 2016 application was approved and paid, but it had been seized by a judgment creditor to pay on an established debt.¹¹

Ms. T followed up on the division’s July letter promptly. On July 20, 2017, she visited a PFD office, where she learned her 2016 application had been denied. She submitted a Request for

⁶ Exhibit 3.

⁷ Exhibit 3, p. 1.

⁸ Exhibit 4.

⁹ *Id.*

¹⁰ Exhibit 10; T testimony; PFD hearing representative statement.

¹¹ *See* Exhibit 2 (writ of execution issued April 2015); T testimony.

Informal Appeal the same day, 130 days after the March 12th appeal deadline and 160 days after the division issued the notice denying her 2016 application.¹²

Ms. T argued that she did not receive the division’s December 2, 2016 letter or the February 10, 2017 denial notice. She attributed this to unreliable mail delivery, since she was aware of delivery problems for other mail.¹³ She also clarified that she was not absent from Alaska at any time during 2015. Her response to Question 3.A. of the application had been an error.¹⁴

The division denied the appeal as too late.¹⁵ This formal appeal followed.¹⁶ On the merits of the eligibility issue, the division agreed that Ms. T’s explanation would have qualified her for the 2016 PFD if she had appealed on time.¹⁷ However, it asserted, the program’s regulations require individuals to appeal in a timely way, and Ms. T has not shown reasonable cause for submitting her appeal more than four months after the appeal deadline.

III. Discussion

When the division denies a PFD application, Department of Revenue regulations set the rules for challenging that decision. To initiate the appeal process, the applicant must first request an informal appeal, which can then be followed, if necessary, by a formal appeal.¹⁸ As a general rule, the appeal request must be filed with the division within 30 days after it issued notice of its decision denying the application.¹⁹ In this case, the 30-day appeal window expired on March 12, 2017. Ms. T filed her appeal on July 20th.

An exception to the general rule is available to applicants who fail to appeal within 30 days, but only if the applicant “demonstrates a reasonable cause for the failure to file within this period.”²⁰ Similarly, the administrative law judge may waive the appeal deadline if adherence to it “would work an injustice.”²¹ At issue is whether Ms. T has demonstrated a reasonable cause for being late or whether adhering to the deadline in her case would work 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 been set aside only

¹² Exhibit 5. She also submitted the 2016 Audit Form. Exhibit 6.

¹³ Exhibit 5, p. 2.

¹⁴ See Exhibit 9, p. 2.

¹⁵ Exhibit 8.

¹⁶ Exhibit 9.

¹⁷ Division hearing representative statement.

¹⁸ 15 AAC 05.010(h).

¹⁹ 15 AAC 05.010(b)(5).

²⁰ *Id.*

in particularly compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

*In re V.D., OAH No. 14-0943-PFD (2014):*²² Division properly mailed denial notice, but it was returned as undeliverable due to applicant's error. Applicant accessed online PFD account, which presumably put her on notice of the application's denial, more than 30 days before initiating the appeal. Appeal 128 days late not excused.

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.

In re B., Caseload No. 040286 (2004): Division's denial had errors that may have caused confusion about appeal deadline. Delay of "a week or two" might have been excusable. One-year delay in appeal not excused.

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):*²³ 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):*²⁴ 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 general, waivers have been available where the division's conduct created confusion that contributed to 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 neglect to inform herself about the status of an application is not ordinarily a basis to waive the appeal deadline.

Here, Ms. T attributed her lack of actual notice to unreliable mail delivery, generally noting that she has experienced other problems, such as non-delivery of packages for mail-ordered items. She did not provide other evidence documenting this issue. She also recalled being very

²¹ 15 AAC 05.030(k).

²² See Exhibit 8, pp. 6-10.

²³ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

²⁴ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

busy caring for her mother, who has since passed away. Ms. T remembers this period as a challenging time.

Based on this information, it would be difficult to conclude that Ms. T received neither of the division's letters about her 2016 application. More likely than not, she received at least one of them, though she may have failed to appreciate its significance given the stress in her life at the time. Even if she did not receive either letter, however, Ms. T has not shown reasonable cause for failing to keep herself informed about the status of her application for such an extended period of time.

Ms. T has submitted six of her last seven PFD applications via the division's online service.²⁵ This strongly suggests familiarity with online access to her PFD information and account history. Around March 30, 2017, she logged into that account and submitted her 2017 application.²⁶ This would have informed her that her 2016 PFD had been denied. However, she did not initiate an appeal of that decision until July 20th. Though Ms. T was understandably distracted by her mother's needs, a busy life is not a sufficient excuse for such a long delay. Similarly, her assumption that the payment had been seized is not sufficient, given the ease with which she could have verified that assumption.

In contrast, the division did nothing wrong in this case. It mailed two notices to Ms. T's address of record. Each letter specified the information the division needed before it could approve her 2016 application. Neither notice was returned to the division as undeliverable. Based on the information available to it, the division reasonably concluded Ms. T was ineligible. Ms. T was solely responsible for the error on her application as well as for her failure to learn about (and act on) the denial in a timely way.

IV. Conclusion

Ms. T has not shown reasonable cause for submitting an appeal 130 days after the deadline, and the facts do not suggest that adherence to the normal appeal deadline would result in an injustice. The division's motion is therefore granted, and Ms. T's appeal is dismissed.

DATED: December 4, 2017.

By: Signed
Kathryn Swiderski
Administrative Law Judge

²⁵ Exhibit 10.

²⁶ Division hearing representative statement; T testimony (late March 2017).

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 29th day of December, 2017.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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