

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

In the Matter of)	
)	
K G and)	
D G (minor))	OAH No. 17-1139-PFD
)	Agency No. 2017-066-9893/94
<u>2017 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

K D. G of No Name City applied for 2017 Permanent Fund Dividends (PFDs) for himself and his daughter in an envelope postmarked April 7, 2017. Because PFD applications are due by March 31, the Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis of untimeliness. Mr. G requested a formal hearing by correspondence.

The division’s denial is affirmed because the application was filed late and did not qualify for any exception to the deadline. The law leaves no discretion to make an exception for either applicant in this case. Although no dividend can be paid now, however, D G likely will eventually receive the missed dividend, because there will be an opportunity for her to reapply when she is older.

II. Facts

K D. G is a 30-year-old resident of No Name City who has been receiving dividends since he was born.¹ In 2017, he applied for himself and his six-year-old daughter, D.

Because Mr. G did not choose an oral hearing, it has not been possible to explore his credibility. This decision assumes, without deciding, that his history of how his application came to be late is basically accurate. He has actually provided two accounts, both written on his appeal form, one apparently written by him and one by a USPS window clerk named B T. They differ slightly, but can be reconciled for all practical purposes.

According to these accounts, the two applications were in an envelope that was either mailed on Wednesday, March 29, 2017 or dropped off in a “drop box” the previous day.² Sometime between April 3 and 7, the envelope appeared back in Mr. G’s post office box, having

¹ Ex. 7.

² Mr. G says the application was mailed on the 29th, while Ms. T says it went into the “drop box” on the 28th. Ex. 5, p. 2.

been stamped “RETURN FOR POSTAGE.”³ Mr. G contends that the envelope originally had a stamp, but “my stamp somehow came off.”⁴ He reports that he purchased a new stamp and mailed the letter again.⁵ The envelope with the two applications reached the PFD Division on April 10, 2017, bearing a machine-applied Anchorage postmark dated April 7.⁶ The No Name City postal clerk claims to have applied this postmark.⁷ There was no other postmark on the envelope.

The Division denied the two G applications because they were not delivered or postmarked within the March 31, 2017 deadline.⁸ Mr. G’s informal appeal, in which he made no arguments and submitted no evidence, was unsuccessful.⁹ On October 30, 2017, he requested a formal hearing by correspondence.¹⁰

By notice dated November 8, 2017, Mr. G was given until December 8, 2017 to send any additional documents or correspondence for consideration in this formal appeal. The PFD Division was given the same deadline. Each party was given until December 22, 2017 to respond to any documents received from the other. The Division filed a position statement with attached documents; Mr. G filed nothing.

III. Discussion

In formal hearings regarding PFDs, the individual challenging the Division’s initial decision “has the burden of proving that the action . . . is incorrect.”¹¹ This has to be proven by the preponderance of the evidence,¹² meaning that Mr. G must show that the Division’s conclusion that his application was untimely was *probably* incorrect.

Analysis begins with the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year. In passing the statute, the legislature provided only two exceptions. To be eligible for either of

³ See Ex. 4, p. 6. Ms. T places this event on April 7, while Mr. G places it less than a week after March 29. Ex. 5, p. 2.

⁴ Ex. 5, p. 2.

⁵ *Id.*

⁶ Ex. 1, p. 5.

⁷ Ex. 5, p. 2. This claim by Ms. T seems a little implausible, but will be accepted for purposes of this decision.

⁸ Ex. 2, p. 3.

⁹ Ex. 4.

¹⁰ Ex. 5.

¹¹ 15 AAC 05.030(h).

¹² 2 AAC 64.290(c).

them, the applicant has to be a member of the armed services.¹³ Mr. G's application shows that he was not in the armed forces, and so the March 31 deadline was absolute for him.¹⁴ Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,¹⁵ but again, Mr. G is not in these categories and thus must show he applied by March 31 of the dividend year (his daughter's options, as a minor, will be addressed later).

Through regulations, the Department of Revenue has set out the details of how the March 31 deadline will be applied. Under 15 AAC 23.103(a), the application "must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." The G application was neither.

There is, however, another regulation, 15 AAC 23.103(g), which indicates that an application is timely if it was "delivered to the post office in sufficient time to be postmarked before the end of the application period," which, in some circumstances, is slightly different from actually *being* postmarked during the application period. That regulation goes on to provide that an application postmarked after the deadline will be denied unless the applicant produces "an official statement" from the postal authorities describing the "specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting."¹⁶

What Mr. G has done is submit an informal (not official) statement from a postal clerk, which describes how the applications came to be postmarked in April but does not describe anything that was done "incorrectly" by the Postal Service, nor anything the Postal Service did that "caused a delay." Instead, we are left with an indication that, at best, Mr. G mailed the applications with a stamp that was not firmly affixed; it then fell off, and—appropriately—the Postal Service returned the envelope for postage. The clerk's statement does not meet the form or content required of the official statement needed to qualify for the special exception in 15 AAC 23.103(g).

The Department of Revenue is bound by its own regulations. It is not allowed to make exceptions because it sympathizes with people. In Mr. G's situation, the fact that the stamp may have fallen off is understandable, but it does not change the scope of exceptions to the March 31

¹³ AS 43.23.011(b), (c).

¹⁴ Ex. 1, p. 1.

¹⁵ See AS 43.23.055(3), (7).

deadline. Without the official statement showing the Postal Service erred or caused the delay in posting (rather than Mr. G's own failure to firmly apply a stamp), the Department of Revenue has no discretion in this matter. It cannot grant Mr. G a dividend.

The situation is slightly different for D G. Like her father's, her current application is late and does not fall within any exception. However, it still probably will be possible for her to receive a 2017 PFD, but payment will be long delayed. Assuming she is not emancipated sooner, D should qualify between August 21, 2029 and August 21, 2031, as follows:

- (b) An individual who has reached majority, or who is an emancipated minor, may apply to the department for a prior year dividend if
 - (1) the individual had not reached majority by the end of the application period for the dividend year for which the individual is applying;
 - (2) a complete application . . . was not timely filed . . .; and
 - (3) the individual would have qualified for a dividend had an eligible sponsor applied on the individual's behalf during the pertinent dividend year.
- (c) An individual who qualifies under (b) of this section must file, before the individual reaches 20 years of age, an application prescribed by the department.¹⁷

D will have to reapply on her own behalf during that two-year window to qualify for the 2017 payment. It would be wise for Mr. G to retain this decision so that D can attach it to her application when she reapplies.

IV. Conclusion

Because their applications were filed after the deadline and did not qualify for any exception to the deadline, the Division cannot grant K or D G a dividend for 2017 based on those applications. This decision does not affect their ability to qualify in 2018 or future years. In addition, D G may reapply for the missed dividend when she first becomes an adult.

DATED this 5th day of January, 2018.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

¹⁶ 15 AAC 23.103(g).

¹⁷ 15 AAC 23.133(b) and (c).

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 30th day of January, 2018.

By: Signed
Signature
Christopher Kennedy
Name
Commissioner's Delegate
Title

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