

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

In the Matter of	)	
	)	
B B;	)	OAH No. 20-0226-PFD
Q & C B	)	Agency Nos. 2019-067-7082, 7083 &
(minors)	)	7084
	)	
<u>2019 Permanent Fund Dividends</u>	)	

**DECISION**

**I. Introduction**

The 2019 Permanent Fund Dividend (“PFD”) applications for C B and his children, Q and C B were signed 45 days, postmarked 51 days, and arrived at the Department of Revenue (“DOR”) 58 days, after the application period closed. The Permanent Fund Division (“Division”) denied the applications because of untimeliness.

Mr. B timely filed informal appeals of the Division’s denial of his children’s applications but failed to timely file an informal appeal for himself. The informal appeal of his children’s applications was denied because the applications were both late-filed and did not have an eligible sponsor. Subsequently, Mr. B filed late and incomplete formal hearing requests. These were accepted by the Division and construed as a formal hearing request on behalf of all three family members. In requesting this formal hearing, Mr. B has sought that the hearing be conducted by correspondence.

The Division’s denials of all three B family 2019 PFD applications are affirmed because the applications were submitted late and there has been no proof that the applications qualified for any exception to the deadline. Although no dividends can be paid now to the B children, they will likely have an opportunity to receive the missed dividends by reapplying when they are older.

**II. Facts**

Mr. B and his minor children are residents of Village A.<sup>1</sup> Mr. B. is 56, Q is 10 and C is almost three.<sup>2</sup> Apart from the question of timeliness and that the children’s applications failed to have an eligible sponsor due to the denial of Mr. B’s application on the basis of timeliness, all three family members appear to have met the eligibility requirements for the 2019 dividend.<sup>3</sup>

There has been no evidence submitted that the applications were filed late because Mr. B

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<sup>1</sup> Ex. 1, pp. 1, 5 and 7.

<sup>2</sup> Ex. 1, pp. 1, 5 and 7.

<sup>3</sup> Ex. 2, pp. 1-5.

suffers from a disability<sup>4</sup> or was an active duty member of the armed forces of the United States.<sup>5</sup> Mr. B received PFD dividends from 1982 through 2000, 2002 through 2015 and 2017. He is not on file for having received dividends for 2001, 2016, or 2018.<sup>6</sup> Q B received dividends from 2010 through 2017.<sup>7</sup> C B received dividends from 2008 through 2017.<sup>8</sup> Neither of the children received dividends in 2018.<sup>9</sup>

The 2019 B family PFD applications were all submitted in paper form.<sup>10</sup> They were each signed by C B with a clearly legible signature and date of May 15, 2019.<sup>11</sup> They were all mailed together in a single envelope. The envelope has a “Village A” postmark, dated May 21, 2019.<sup>12</sup> The envelope is stamped “Received PFD May 28, 2019.”<sup>13</sup> Each of the three B applications is also separately stamped as received by the Division on May 28, 2019.<sup>14</sup>

In the requests for informal appeal, Mr. B indicated “I applied on time for me & my kids. . . Our Postmistress knows I applied. . . I apply on time every year. . . I would never miss. . . Please call our PostMistress [sic] @ (907) 000-0000.”<sup>15</sup> In the request for formal hearing, he further indicates that:

Our Postal Service was closed for a long period of time, possible Feb[r]uary, March or April and my application I was sending somehow was lost, because of backed up mail in the post office. [At] that time we did not have a post master then, a lot of mail was lost or either [sent] out really late, there is a lot of people who we denied with PFD application[s] because of that.<sup>16</sup>

The B family’s 2019 PFD applications were denied by the Division because of untimeliness on July 26, 2019. The children’s applications were further denied on the basis of Mr. B being an ineligible sponsor (because his application had been denied).<sup>17</sup> Mr. B, timely filed informal appeals of the Division’s denial of his children’s applications, but failed to timely file an informal

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<sup>4</sup> See AS 43.23.095(2); 15 AAC 23.133(d).

<sup>5</sup> See AS 43.23.011(b).

<sup>6</sup> Ex. 9, p. 1.

<sup>7</sup> Ex. 9, p. 2.

<sup>8</sup> Ex. 9, p. 3.

<sup>9</sup> Ex. 9, pp. 2-3.

<sup>10</sup> Ex. 1, pp. 1, 5 and 7.

<sup>11</sup> Ex. 1, pp. 4, 6 and 8.

<sup>12</sup> Ex. 1, p. 9.

<sup>13</sup> Ex. 1, p. 9.

<sup>14</sup> Ex. 1, pp. 1, 5 and 7.

<sup>15</sup> Ex. 3, pp. 2 and 4.

<sup>16</sup> Ex. 5, p. 2; Ex. 7, p. 2.

<sup>17</sup> Ex. 2.

appeal for himself.<sup>18</sup> The Division denied the informal appeal of the children’s applications on the basis that they were both late-filed and did not having an eligible sponsor.<sup>19</sup>

After that, and in an effort to continue the appeal process, Mr. B filed several documents that were late and/or incomplete.<sup>20</sup> For convenience, the Division construed the documentation as comprising a formal hearing request on all three B applications and is simultaneously seeking resolution of all three applications by way of referral to the Office of Administrative Hearings.<sup>21</sup>

Mr. B requested that the formal hearing be conducted by correspondence.<sup>22</sup> By notice dated March 6, 2020, he and the Division were given until April 6, 2020 to send any additional documents or correspondence for consideration in this appeal. Each party was also given until April 20, 2020 to respond to any documents received from the other.<sup>23</sup> The Division filed a position statement and exhibits on March 25, 2020.<sup>24</sup> Nothing further has been filed by Mr. B after his earlier requests for formal hearing.

### **III. Discussion**

In general, applications for PFDs must be received or postmarked between January 1 and March 31 of the dividend year.<sup>25</sup> The only exceptions allowed to the filing deadline are for certain children when their parents or guardians do not timely apply on their behalf,<sup>26</sup> for certain military members who were eligible for imminent danger or hostile fire pay during the application period,<sup>27</sup> and for persons suffering from disabilities which prevented them from timely filing.<sup>28</sup> Since Mr. B is not in one of these categories, for him, the March 31 deadline was absolute.

Whether an application is considered timely postmarked or delivered is established by regulation, 15 AAC 23.103(g), the relevant portion of which reads:

It is an individual’s responsibility to ensure that an application is timely delivered to the department. A paper application must be timely delivered to the department during normal business hours or delivered to the post office in sufficient time to be postmarked before the end of the application

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<sup>18</sup> Ex. 3.

<sup>19</sup> Ex. 4.

<sup>20</sup> Exs. 5-6.

<sup>21</sup> Office of Administrative Hearings Case Referral Notice, dated March 5, 2020.

<sup>22</sup> Ex. 5, p. 1; Ex. 6, p. 2; Ex. 7, p. 1.

<sup>23</sup> Notice of Hearing by Correspondence, dated March 6, 2020.

<sup>24</sup> Formal Hearing Position Statement, dated March 25, 2020; Formal Hearing Exhibit Letter, dated March 25, 2020.

<sup>25</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>26</sup> 15 AAC 23.133(b) and (c).

<sup>27</sup> AS 43.23.011(b).

<sup>28</sup> AS 43.23.095(2); 15 AAC 23.133(d).

period. The department will deny an application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting.

Under 15 AAC 23.103(h), if an application was timely mailed but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year if the "reapplication" is accompanied by a mailing receipt or a mailing return receipt showing the original application was timely.<sup>29</sup>

Here, Mr. B has suggested that the applications for him and his family were untimely due to Village A not having a Postmaster during the relevant period or because the post office was closed. However, critical to the analysis is that all three B family 2019 PFD applications were apparently signed by Mr. B, on May 15, 2019, or 45 days after the application period had already ended. In other words, the applications were not even timely prepared and signed by the end of the application period, much less mailed. Further, once they were signed on May 15, 2019, they were postmarked in Village A on May 21, 2019, and received by the Division on May 28, 2019. Consequently, it is obvious that the delay in the 2019 B applications was not attributable to shortcomings in the mailing process, but instead, to the late point in time they were filled-out and prepared.

Government officials can only pay a dividend to people who qualify and who either make a timely application or can show, through a limited range of indisputable means, that they correctly took the steps to make a timely application. For 2019, Mr. B did not make that showing. Therefore, Mr. B is not among the individuals to whom officials can make the payment.

The situation is slightly different, however, for Mr. B's children. Like their father, the applications of Q B and C B are late. However, because they are minors who were reliant upon an adult to make a timely application, it is still possible for them to receive a 2019 PFD, but payment will be delayed. This is because the regulations allow for an exception in instances of where an eligible sponsor did not timely apply on a minor's behalf. Assuming they are not emancipated sooner, Mr. B's children should be eligible to reapply to receive their 2019 PFD dividends when they are between the ages of 18 and 20. Specifically, 15 AAC 23.133 provides as

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<sup>29</sup> 15 AAC 23.103(h).

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.

Accordingly, Q B and C B will have to reapply for their 2019 Dividends, on their own behalf, during the two-year window when they are each between 18 and 20 years of age. It would be wise for Mr. B to retain this decision so that Q B and C B can attach it to their applications if, and when, they later apply during that two-year window.

#### **IV. Conclusion**

The decision of the Division to deny the 2019 dividend to Mr. B, Q B, and C B is AFFIRMED. Their applications were untimely and none of the exceptions which might allow an untimely application apply.

This decision does not affect the ability of Q B and C B to reapply for their 2019 dividends when they turn 18.

DATED this 13th day of May, 2020.

By: Signed  
Z. Kent Sullivan  
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 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 4th day of June, 2020.

By: Signed  
Signature  
Z. Kent Sullivan  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]