

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

In the Matter of)	
)	
L Q and U, V and N Q (minors))	
)	
2020 Permanent Fund Dividends)	OAH No. 20-0844-PFD
)	Agency Nos. 2020-067-3677, 3678,
<hr style="width: 40%; margin-left: 0;"/>)	3679 and 3680

DECISION

I. Introduction

L Q, on behalf of herself and her three minor children, U, V, and N, submitted applications for 2020 Permanent Fund Dividends (PFD). The applications were received by the Permanent Fund Dividend Division (Division) on May 12, 2020. The Division denied the applications, both initially and at the informal appeal level, because they were filed after the deadline. Ms. Q requested a formal hearing, and the case was subsequently heard.

The Division’s denial is affirmed because the applications were filed late and did not qualify for any exception to the deadline. Under these facts, the law leaves no discretion to make an exception. Although no dividend can be paid now, Ms. Q’s children may potentially receive the missed dividends, because there will be an opportunity for them to reapply when they are older.

II. Facts

The Q family applied for 2020 PFDs using paper applications. The applications were signed and postmarked on May 9, 2020, and received by the Division on May 12, 2020.¹ The applications were denied because they were received after the deadline of April 30, 2020.²

Ms. Q timely filed a request for informal appeal of the denials on behalf of the family.³ In her request, she explained that even aside from COVID-19, two other events happened in April 2020 that caused her life to become chaotic. Namely, her goddaughter’s mother passed

¹ Ex. 1.
² Ex. 2. Normally, per AS 43.23.011(a), the PFD application deadline is March 31 of the dividend year. However, in 2020 due to COVID-19, the dividend application deadline was extended by SB 241 to April 30, 2020. See SB 241, Sec. 10 at <http://www.akleg.gov/PDF/31/Bills/SB0241Z.PDF>.
³ Ex. 4.

away causing her to move in with the family for a short period to assist them, and also, she unexpectedly escorted her niece to Chicago for emergency surgery.⁴

The Division subsequently denied the family's informal appeal also based on untimeliness⁵ and Ms. Qs requested a formal hearing.⁶ At the hearing, she did not deny that the applications were untimely. Instead, she testified that she was under the impression that if initially denied she might succeed in having the applications approved if she simply requested an appeal and hearing for the applications. She believed this to be so even if she did not possess any real legal or factual defense to the late-filing. As such, Ms. Q was essentially seeking to have the applications discretionarily approved by the administrative law judge by way of the formal hearing process.⁷

III. Discussion

This case turns on the PFD application deadline requirement found in AS 43.23.011. As the statute provides, normally, the period for applying for a dividend ends on March 31 of the dividend year. This year, however, due to COVID-19, the application deadline was extended by SB 241 to April 30, 2020.⁸ In originally passing AS 43.23.011, the legislature provided only two exceptions to the filing deadline. To be eligible for either of them, the applicant must be both a member of the armed services and eligible for hostile fire or imminent danger pay.⁹ Ms. Q has not alleged either, and as such, the extended deadline of April 30 was absolute for her.¹⁰

Through regulations, the Department of Revenue has set out the details of how the application deadline will be applied. Per 15 AAC 23.103(a), the application "must be received by DOR or postmarked during the application period set by AS 43.23.011 to be considered timely filed." There is a related regulation, 15 AAC 23.103(g), that deals with the problem of applications received after the deadline. It 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

⁴ Ex. 4, p. 2.

⁵ Ex. 5.

⁶ Ex. 6.

⁷ Testimony of L Q.

⁸ See SB 241, Sec. 10.

⁹ AS 43.23.011(b), (c). Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline. See AS 43.23.055(3), (7). Except as noted below, these have no relevance here.

¹⁰ SB 241, Sec. 10.

office in sufficient time to be postmarked before the end of the application period.

Here, the applications were neither dated, postmarked, nor received by the Division until after the deadline had passed.¹¹ Since the applications were not received by the Division during the application period, they were not timely filed.¹²

The Department of Revenue is bound by its regulations. It is not allowed to make exceptions. In Ms. Q's situation, the fact that she had unexpected obligations arise makes her inattention to the application deadline understandable. However, it does not change the scope of exceptions to the April 30 deadline. Without evidence proving that the Division was in error—that it had, in fact, received the family's applications before the deadline—there is no discretion in this matter. The family's dividends simply cannot be granted.

Despite the above, it is possible for Ms. Q's minor children to receive their 2020 PFDs by re-applying when they are between the ages of 18 and 20. This is because regulations allow for a minor, upon turning 18, to overcome certain application irregularities where a parent or eligible sponsor failed to timely file or complete an application on the minor's behalf. Specifically, 15 AAC 23.133 provides 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.

Accordingly, U, V, and N will have an opportunity to reapply for their 2020 dividends, on their own behalf, during the two-year window when they are between 18 and 20 years of age. In doing so, they will no longer be denied on the basis that their mother previously filed the

¹¹ Ex. 1.

¹² AS 43.23.011(a); SB 241, Sec. 10.

applications late. It may be wise for Ms. Q to retain this decision so that her children can attach it to their applications if, and when, they later apply during their respective two-year windows to do so.

IV. Conclusion

The Division’s decision denying the Q’s family applications due to untimeliness is **AFFIRMED**. This decision does not affect the ability of the Q children to reapply for their 2020 dividends when they turn 18.

DATED this 10th day of December, 2020.

By: Signed _____
Z. Kent Sullivan
Administrative Law Judge

Adoption

This Decision 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 5th day of January, 2021.

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

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