

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

In the Matter of)	
)	
D C and)	
F G (minor))	OAH No. 18-0528-PFD
)	Agency No. 2017-067-1874/1875
<u>2017 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

The Permanent Fund Dividend Division did not receive 2017 dividend applications for D C and his daughter F G until November 6, 2017. According to D C’s wife E C, who handles the dividend applications for the family, she mailed in applications for her husband and her daughter F G in March 2017. However, she did not give the division proof of mailing or a return receipt. The division denied the November applications as untimely initially and at the informal appeal level.

Because the applications for D C and F G were not timely filed, the division’s denial of the two applications is affirmed. However, even though no dividend can be paid now, F G will have another opportunity to apply for the missed dividend when she turns 18.

II. Facts

D C and E C have six children in their household. They live in City A. E C handles the family’s permanent fund dividend applications. E C applied for her own 2017 dividend online on January 9, 2017. She completed online applications as sponsor for five of the children. At least one of these, an application for her son Q G, was filed on January 13, 2017.¹ E C did not complete online applications for her husband or her daughter F G.² According to E C, she mailed in paper applications for them in mid-March.³

However, in October 2017, the family did not receive dividends for D C or for F G. On October 10, 2017, D C called the division, and explained that E C had submitted his application.

¹ Ex. 6.
² Ex. 6 at 1; Ex. 8 at 1.
³ Testimony of E C.

The eligibility technician determined that D C was not eligible for an “adult reapply” application.⁴ Then on October 12, 2017, E C emailed the division asking why her daughter and husband’s dividends had not been processed. On October 16, 2017, an eligibility technician emailed E C back that she did not see a 2017 application for F G on file. She asked whether E C had filed an application for her daughter, and if so, how and when she filed.⁵ E C called the division on October 25, 2018 and spoke with a different eligibility technician, who told her he would send late application forms, and that the applications would be denied for the late filing but would contain appeal paperwork.⁶ A legislator’s office called the division on October 26, 2017 to check on the C’s application. The eligibility technician explained that all of the other applications for the family were submitted online, and that the division had no electronic record indicating an attempt to file an application online for D C or F G.⁷ Finally, E C submitted six pages of material to the division, including a letter stating that the applications for D C and F G were mailed, a 2017 adult certification form signed by D C, and a doctor’s note about E C’s knee and ankle arthritis. These were received by the division on October 27, 2018.⁸

The Cs then completed new paper 2017 dividend applications for D C and F G using forms that had been marked by the division as having been distributed after the application deadline. The division received these applications on November 6, 2018.⁹ The division denied D C’s application on December 1, 2017 and denied E C’s application as sponsor for F G on December 8, 2017. The division denied both applications as untimely because the Cs did not supply documentation showing that the applications were submitted before the March 31, 2017 deadline.¹⁰ The division denied both applications again at the informal appeal level.¹¹ This appeal followed. Two separate telephonic hearings were held on June 21, 2018, one on the application for F G’s dividend, and the other on the application for D C’s dividend. E C testified at both hearings; D C testified at the hearing on his dividend application.

⁴ Testimony of Scott; Ex. 8 at 2 (“Not eligible for AR”).

⁵ Ex. 7 at 1.

⁶ Ex. 8 at 1.

⁷ Ex. 8 at 1 (“verified no attempt to file in the first page data trap”). At the hearing, the division’s representative testified that the division’s computer captures incomplete attempts to file online as well as completed applications. The eligibility technician’s note indicates that she checked the computer to see whether there had been an attempt to file online, and that the division’s computer did not record an attempt to file online.

⁸ Ex. 7 at 2 - 7.

⁹ Ex. 1 at 1 - 6.

¹⁰ Ex. 2 at 1, 3.

¹¹ Ex. 4.

III. Discussion

The legislature has adopted a strict deadline for permanent fund dividend applications. The period for applying for a dividend ends on March 31 of the dividend year.¹² An application must be received by the division or postmarked during the application period to be considered timely.¹³ The applicant is responsible for ensuring that the application is timely delivered to the division.¹⁴

According to E C, she completed paper applications for her husband and daughter. She put them in an envelope, put a stamp on the envelope, and mailed the applications at the post office just before the deadline. E C did not get a mailing receipt or a request return receipt.¹⁵

E C's testimony about why she filed paper applications for D C and F G was not entirely consistent. E C testified that she filed a paper application for her daughter's dividend because "it wasn't getting processed through online." This suggests that E C thought she had filed applications for her husband and daughter online. However, E C also testified that the reason she did not complete D C and F G's applications online was because she was using the computer at her parents' house, and it had grown too late in the evening. The division's records show that E C's own application was filed online on January 9, 2017 just after midnight. Her son Q G's application was filed around 9 p.m. on January 13, 2017.

Also, E C apparently sought the opportunity to file an application late on the basis of disability. Along with the other materials received by the division from E C on October 27, 2017, there was a reminder dated August 21, 2017 addressed to E C about an orthopedic clinic taking place in City B. The form had handwritten notes with an appointment date and time, and also the following: "To: PFD Every year I apply for my husband: D C PFD + my minor daughter: F G." This note goes on to say "E C has Arthritis on her left ankle + knee She barily go places. This is her last appointment with the Medical Center doctor. She want disable to file late for her husband + daughter PFD for 2017. Thank you." There is also a signature preceded by the title "Dr."

¹² AS 43.23.011.

¹³ 15 AAC 23.103(a). There are exceptions for military personnel eligible for hostile fire or imminent danger pay. There was no evidence indicating that either D C or F G might qualify for one of those exceptions.

¹⁴ 15 AAC 23.103(g).

¹⁵ Testimony of E C.

The PFD statutes include a provision for an authorized representative of a disabled person to file an application for a prior year's dividend for the disabled person.¹⁶ However, the note E C sent the PFD division would tend to show that E C has a disability rather than D C or F G, and E C submitted her own application on time. So, the late application provisions designed to benefit disabled adults who miss a dividend because no application was filed do not apply in this case. Unfortunately, this note, apparently seeking a means to file an application after the deadline, tends to undermine the credibility of E C's assertion that she timely filed paper applications for her husband and daughter.

It is possible that E C completed paper applications for D C and F G, and that those applications were lost in the mail, as E C suggests. However, it is at least as likely that E C simply forgot to file the applications for D C and F G. Under the regulations governing this hearing, the individual challenging the division's decision "has the burden of proving that the action by the department to which that person objects is incorrect."¹⁷ This has to be proven by the preponderance of the evidence.¹⁸ The Cs did not meet this burden.

At the hearing, the division acknowledged that occasionally applications are lost by the postal service or misplaced in the division's mail room. To address those cases, the division allows individuals to reapply if they can produce a mailing receipt, or a return receipt. Where those are not available, the regulation allows an individual to submit an affidavit "in which the individual attests that the individual mailed or submitted the previous application timely, or a sponsor applying on behalf of the individual attests that the sponsor mailed or submitted the previous application timely." Individuals submitting such an affidavit can reapply after the deadline, but an individual may use this opportunity only once during the individual's lifetime.¹⁹

When an individual requests to reapply, the division responds with either a special "reapply application," or a regular application form that is stamped "this form was distributed after the application deadline by JDIO." If an applicant can provide proof of mailing or attest that they did timely file, the division will send a reapply application. If not, the division will send the application form with the stamp indicating the form was distributed after the deadline.

¹⁶ AS 43.23.055(7).

¹⁷ 15 AAC 05.030(h).

¹⁸ 2 AAC 64.290(c).

¹⁹ 15 AAC 23.103(h).

An application with this stamp will be denied, but can become the basis for an appeal, as in this case.²⁰

The division did not offer D C an adult reapply application in this case because he told the division that E C had sent his application in for him. The division has interpreted the regulation on requests to reapply to limit the opportunity to reapply with an affidavit to those individuals who send in their own applications and can personally attest that they have done so.²¹ The division handled D C's case correctly. Because D C did not mail his application, he cannot make the necessary attestation. Accordingly, he will miss the 2017 dividend.

The situation relating to F G's application is somewhat more complex because F G is a minor and E C completed the application for her daughter's dividend as her daughter's sponsor. E C did not submit a notarized affidavit attesting to timely mailing, and the division did not approve E C's request to reapply as sponsor for F G because the division did not believe that E C could establish her daughter's eligibility under 15 AAC 23.103(h)(4).²² At the hearing, E C had an opportunity to present evidence that she timely submitted an application for her daughter, but, as discussed above, the record was not sufficient to establish that it is more likely than not that a timely application was submitted. The division did not err in declining to send E C a child reapply application, or in denying the stamped application E C filed for F G as untimely.

Nonetheless, there is another way for F G to obtain a 2017 dividend. F G will turn 18 a little over a year from now. Once she turns 18, F G will be able to apply for a 2017 dividend under 15 AAC 23.133(b) because an application was not timely filed by E C, and F G would have qualified for the dividend had E C submitted a timely application for her.²³ However, the division does not issue prior year dividends automatically; F G must reapply, and she must do so before she turns 20.²⁴

IV. Conclusion

²⁰ Testimony of Scott.

²¹ Testimony of Scott. *See also In re J.S. M.*, 16-0591-PFD (Commissioner of Revenue 2016) (where applicant gave application to a friend to mail but application was not received by the division, decision held no timely application was filed).

²² The division did not address whether, if E C had submitted such an affidavit in this case, it would prohibit F G from availing herself of the opportunity afforded by 15 AAC 23.103(h)(4) in the future.

²³ 15 AAC 23.133(b).

²⁴ 15 AAC 23.133(c). At the hearing, the division representative stated on the record that if E C, as F G's sponsor, did not prevail in this appeal, F G could apply for a 2017 dividend when she turns 18, and the division would approve that application.

Because his application was filed after the deadline, D C does not qualify for a 2017 dividend. Although the division did not receive a timely application for F G, F G may reapply for the missed 2017 dividend once she turns 18. This decision does not affect the ability of D C or F G to qualify for dividends in 2018 or future years.

DATED: July 30, 2018.

Signed _____
Kathryn L. Kurtz
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 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 August, 2018.

By: Signed _____
Sheldon Fisher
Commissioner

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