

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

In the Matter of	)	
	)	
F. & K. N.	)	OAH No. 23-0650-PFD
	)	
<u>2022 Permanent Fund Dividend</u>	)	
	)	
In the Matter of	)	
	)	
E. P. N.	)	OAH No. 0651-PFD
	)	
<u>2022 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

The Permanent Fund Dividend Division (“Division”) did not receive 2022 Permanent Fund Dividend (“PFD”) applications from E. P. N., F. N., or K. N. before the March 31, 2022 deadline.<sup>1</sup> These matters were consolidated for decision pursuant to 2 AAC 64.190(a).<sup>2</sup>

In their appeals and at the hearing, the N. family jointly argued they had submitted timely online applications. However, the Division’s electronic records do not show any member of the N. family filling out even the first page of an application, let alone a complete application, by the deadline.<sup>3</sup> The N. family did submit paper applications, but those were not signed until October, 2022, many months after the deadline.<sup>4</sup> The N. family initiated a timely informal appeal, which the Division denied as their applications had not been submitted before the filing deadline and they had not provided the confirmation numbers to show timely electronic applications.<sup>5</sup> The N. family then requested a formal hearing on the denial of their informal appeals.

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<sup>1</sup> Ex. 13, p. 1.; Ex. 20, p. 1.

<sup>2</sup> See Order Consolidating Cases and Setting Telephonic Hearing Date.

<sup>3</sup> Ex. 5; Ex. 6; Ex. 17.

<sup>4</sup> Ex. 1; Ex. 2; Ex. 16.

<sup>5</sup> Ex. 13; Ex. 14; Ex. 18.

As the N. family did not provide adequate proof they completed an application before the deadline, and the applications they did complete are untimely, the Division's denial of E. P. N., F. N., and K. N.'s PFD application is AFFIRMED.

## **II. Facts**

On September 26, 2022, K. N. went into the Anchorage office of the Division to inquire about the family's electronic applications.<sup>6</sup> The Division notified Mr. N. there was no record of him filing a 2022 PFD online application and it was unable to find Mr. N.'s identifying information in the Division's First Page Data Trap (FPDT).<sup>7</sup> FPDT is a searchable database that captures incomplete attempts to file online, as well as completed applications. When an individual completes the first page of the online PFD application, which involves submitting your personal identification information, that information is captured in the Division's database, even if the application is not submitted.<sup>8</sup>

Mr. N. returned to the Anchorage office with his wife, F. N., on October 6, 2022. The Division was also unable to find F.'s information in the FPDT.<sup>9</sup> As there was no record of 2022 PFD applications for F. and K. N., the Division provided each of them a 2022 paper application that had been stamped, "THIS FORM WAS DISTRIBUTED AFTER THE APPLICATION DEADLINE BY ADIO."<sup>10</sup> On October 26, 2022 the Division received applications for John and F. N., as well as a separate application from their daughter, E.N.<sup>11</sup>

The Division denied the N. family's October 2022 paper applications as untimely, as the family had not provided any documentation to show their 2022 PFD applications were submitted on or before the March 31, 2022 filing deadline.<sup>12</sup> F. N. and K. N. timely filed an informal appeal arguing that they had submitted a timely application online.<sup>13</sup> E.N. filed a separate informal appeal stating:

I submitted my application online carefully following all the directions. I followed this up the next day by mailing in my signature page. Unfortunately, I do not

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<sup>6</sup> Ex. 3.

<sup>7</sup> Ex. 5. *See* Delilah Bernaldo's testimony

<sup>8</sup> Testimony of Delilah Bernaldo

<sup>9</sup> Ex. 6.

<sup>10</sup> Ex. 1; Ex. 2.

<sup>11</sup> Ex. 16.

<sup>12</sup> Ex. 18.

<sup>13</sup> Ex. 9, p. 2. "The letter claimed I did not submit my application on time but I did submit it on line and on time."

possess the necessary technical skills to track what happened to my application after I submitted it.<sup>14</sup>

Upon receipt of E.N.'s informal appeal, the Division ran a search through its FPDT software.<sup>15</sup> The search produced no record of Ms. N. completing even the first page of the application, let alone submitting a completed application.<sup>16</sup> The Division also reviewed its records for a mailed signature page, and only found the signature page submitted with the late filed October application.<sup>17</sup>

The Division denied the N. family's informal appeals, as their October 2022 paper applications were not postmarked or delivered until after the filing deadline and the family had not presented proof of a timely filing.<sup>18</sup> The N. family submitted requests for a formal hearing, and a telephonic formal appeal hearing was held on December 4, 2023.<sup>19</sup>

F., K., and E. N. were present at the hearing with K. and F. N. presenting testimony and argument. The Division was represented by Delilah Bernaldo, a PFD Specialist I. At the hearing the Division's 26 exhibits were admitted with no objection.

K. N. testified that he had submitted applications for the entire family online, but admitted he never got a confirmation number.<sup>20</sup> He further testified, that the entire family had submitted written signature pages. F. N. testified that she contacted the Division in March of 2022, before the 2022 PFD filing deadline, and was informed that the family's applications had not be received. She testified that she was told they would receive mailed applications, but never did.

When Ms. Bernaldo suggested that the family may have confused March 2022 with a prior date, F. N. was adamant that she had contacted the Division before the filing deadline, and that the Division informed her that they were not in receipt of her application. K. and F. N. confirmed that the family filed for the 2022 PFD using the names and social security numbers the Division has on file.<sup>21</sup>

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<sup>14</sup> Ex. 19.

<sup>15</sup> Testimony of Delilah Bernaldo.

<sup>16</sup> Ex. 17, p. 2.

<sup>17</sup> Ex. 19, p. 2.

<sup>18</sup> Ex. 13; Ex. 14; Ex. 20.

<sup>19</sup> While E.N.'s formal appeal request was not timely, based on Ms. N.'s explanation for her untimeliness the Division waived this issue.

<sup>20</sup> Testimony of K.N.

<sup>21</sup> Testimony of K.N. and F.N.

### III. Discussion

As the appellants, the N. family has the burden of proving that they are eligible for 2022 PFDs by showing they timely submitted complete applications.<sup>22</sup> As set forth in regulation, “[i]t is an individual’s responsibility to ensure that an application is timely delivered to the department.” The legislature has adopted a strict deadline for PFD applications. For a paper application to be timely, an application must be received or postmarked by March 31, 2022.<sup>23</sup>

There is no dispute that the N. family’s paper applications, received by the Division in October, 2022 were not timely filed. Those applications were received over 200 days after the filing deadline, and as they were signed after the filing deadline, there is no argument that this delay was caused by an issue with the post office.<sup>24</sup> While there are some narrow exceptions to the March 31 filing deadline for adults, they are for active duty military personnel who are eligible for hostile fire or imminent danger pay, or for persons who are prevented from timely filing by a physical or mental disability.<sup>25</sup> The N. family did not argue they qualify for either exception. This means, for the family to be eligible for PFDs, they must show that their online applications were timely.

For an online application to be timely, the Division must receive the applications electronically by midnight on March 31.<sup>26</sup> If an online application was timely filed, but the Division does not have the application on file, an applicant may request to reapply on or before December 31 of the dividend year.<sup>27</sup> That request to reapply “must be accompanied” by particular types of evidence.<sup>28</sup> For an online application, the appropriate evidence would be “a copy of the computer-generated page containing the permanent fund dividend confirmation

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<sup>22</sup> 15 AAC 05.030(h).

<sup>23</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>24</sup> Ex. 1; Ex. 2; Ex. 16

<sup>25</sup> AS 43.23.011(b)-(c); 15 AAC 23.133(d)

<sup>26</sup> 15 AAC 23.103(g).

<sup>27</sup> 15 AAC 23.103(h)

<sup>28</sup> While none of the parties addressed it at the hearing, and the N. family did not request to reapply by affidavit, in some cases it is also possible to request to reapply by submitting “... a notarized affidavit in which the individual attests that the individual mailed or submitted the previous application timely...”. This request must be made by December 31 of the qualifying year. 15 AAC 23.104(h)(4). However, even if a timely request to reapply had been submitted with a notarized affidavit, only Mr. N. would be eligible to avail himself of this regulation as he testified he submitted electronic applications on behalf of the other family members. *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).

number.”<sup>29</sup> When an online application is submitted, the Division provides the applicant with a confirmation number as proof of their submission.

Had any member of the N. family been able to produce the confirmation number for their PFD application, that person would have been eligible to reapply and have the Division consider that re-application.<sup>30</sup> Yet, no member of the N. family provided a confirmation number. In fact, at the hearing, K. N. admitted that he never received a confirmation number for the family’s applications.<sup>31</sup> The lack of confirmation number, coupled with the lack of identifying information in the Division’s FPDT for any member of the N. family, strongly indicates that the N. family did not submit timely applications.

The N. family were adamant that they timely filed and were not sure what could have happened to their applications; however, it is not necessary for this decision to determine what caused the disconnect between the testimony of the N. family and the Division’s records. Since the Division does not have the family’s online applications – for whatever reason – the PFD can only be paid if the N. family produces the evidence specified in 15 AAC 23.103(h), which the family has not done. The PFD Division is bound by its own regulations, and those regulations do not permit any discretion in this situation.

Therefore, the Division correctly denied the N. family’s appeals on the basis that their applications were not timely filed.

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<sup>29</sup> 15 AAC 23.103(g); 15 AAC 23.103(h)(3).

<sup>30</sup> 15 AAC 23.103(h).

<sup>31</sup> Testimony of K.N.

#### IV. Conclusion

As the N. family did not provide adequate proof that they timely submitted a complete electronic application, and the paper applications they did complete are untimely, the Division's denial of E. P. N., F. N., and K. N.'s PFD applications is AFFIRMED. This decision does not affect E. P. N., F. N., or K. N.'s ability to qualify in 2023 or future years.

Dated: December 12, 2023

By: Signed  
Eric M. Salinger  
Administrative Law Judge

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

## 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 5<sup>th</sup> day of January, 2024.

By: Signed  
Name: Eric M. Salinger  
Title: Administrative Law Judge

