

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

In the Matter of)	
)	
L. N.)	OAH No. 23-0689-PFD
)	
2022 Permanent Fund Dividend)	

DECISION

I. Introduction

In November 2022, L. N. submitted a 2022 Alaska Permanent Fund Dividend (“PFD”) application that was received by the Permanent Fund Dividend Division (the “Division”) 218 days after the filing deadline of March 31, 2022. After the Division denied her application as untimely, and upheld that decision following an informal appeal, Ms. N. was 50 days late in filing a formal appeal of the Division’s decision.

The hearing on Ms. N.’s appeal was held on December 7, 2023. Ms. N. testified and additionally offered the testimony of real estate broker N. U. PFD Specialist Peter Scott appeared on behalf of the Division. Seven exhibits were offered by the Division and admitted into evidence.

Since Ms. N. has not shown that she qualifies for any of the exceptions to the March 31 filing deadline, and additionally failed to demonstrate adequate cause for the delayed filing of her formal appeal, the Division’s denial of her 2022 PFD is affirmed.

II. Facts¹

In March 2022 Ms. N. was a 78-year-old resident of Anchorage with plans to sell her home and move closer to family in the more hospitable climate of southern California. Given an ongoing shortage of homes for sale in the Anchorage area, Ms. N. anticipated a relatively quick sale that would allow her to leave Alaska by the end of the summer.

Ms. N. contemplated filing one last PFD application a few days prior to the filing deadline of March 31, but concluded that she was not eligible based on a statement in the application which provides, “I certify that on the date of application...[that] I am now and

¹ Except where otherwise noted, the facts described in this section are drawn from the hearing testimony of Ms. N. and Mr. U.

intend to remain an Alaska resident indefinitely.”² Since Ms. N. had every intention of relocating to California before the year ended, she thought it would be dishonest – and potentially illegal – to claim that she intended to remain indefinitely in Alaska. Accordingly, she chose not to submit an application before the deadline passed.

In May 2022, Ms. N. listed her home with a local real estate broker. Unfortunately, her hopes for a quick sale were dashed by deferred maintenance issues that had to be addressed if Ms. N. was to maximize the sale price of her home. By October it was clear to Ms. N. that it would take additional time to sell her home, and that she would be remaining in Alaska for the duration of 2022. This prompted her to submit a PFD application which the Division received on November 7, 2022.³ The Division denied this application as untimely on January 13, 2023.⁴

In accordance with the Division’s appeal procedures, Ms. N. timely requested an informal appeal on January 24, 2023.⁵ In a letter accompanying the appeal, Ms. N. explained the circumstances that caused her not to file by the March 31 deadline and requested that she not be penalized for incorrectly anticipating that she would be relocating to California at some point during 2022. In a decision issued on July 28, 2023, the Division affirmed its decision to reject Ms. N.’s application as untimely.⁶ It is undisputed that she received a copy of this decision shortly after it was mailed to her address in Anchorage.

In this decision, the Division advised Ms. N. that if she wanted to pursue a formal appeal, she must do so within 30 days.⁷ Included with this decision was a form that could be used for requesting that appeal. At the top of the first page of this form, the following text appears in large bold print: “**DEADLINE This Form Must Be Received or Postmarked on or Before: August 27, 2023.**”⁸ Ms. N. failed to notice these warnings regarding the formal appeal deadline.

In the meanwhile, Ms. N. was successful in getting an acceptable offer for her home in the summer of 2023, with the sale closing in late August of that year. After selling her home, Ms. N. was temporarily left without a return mailing address that she could use in her

² Exhibit 1, p. 4.

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 5 at p. 1.

⁷ Exhibit 5 at p. 2.

⁸ Exhibit 6 at p. 1.

correspondence with the Division. Believing that she had an unlimited amount of time in which to file her formal appeal, Ms. N. waited to confirm a mailing address in California before sending a formal appeal request to the Division on October 16, 2023.⁹

III. Discussion

In formal hearings regarding permanent fund dividends, the individual challenging the Division's decision to deny an application "has the burden of proving that the action...is incorrect."¹⁰ This must be established by a preponderance of the evidence.¹¹

A. The Division lacks the discretion to accept Ms. N.'s late-filed PFD application.

The PFD application deadline of March 31 was set by the legislature at AS 43.23.011(a). The only exceptions to this deadline provided by the legislature were for military personnel who were eligible for hostile fire or imminent danger pay during the application period.¹² Since Ms. N. has not claimed that she qualifies for those exceptions, the March 31 deadline was absolute for her.

Through regulations, the Department of Revenue has set out the details of how the application deadline will be applied. Under 15 AAC 23.103(a), the application "must be received by the Division 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, which provides:

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 period.

Here, it is undisputed that Ms. N.'s PFD application was not postmarked or received by the Division prior to the March 31 deadline. The reasons why she waited over six months after the deadline passed before filing her application are effectively irrelevant in a context where the Division has no discretion to depart from that deadline under the controlling statutes and regulations.

⁹ Exhibit 6 at p. 3.

¹⁰ 15 AAC 05.030(h).

¹¹ 2 AAC 64.290(e).

¹² AS 43.23.011(a)-(c).

While the Division has adopted a regulation at 15 AAC 23.133(d) that permits individuals to seek a prior year's dividend when they were "disabled" during the application period, Ms. N. has not claimed that her failure to timely apply for the 2022 dividend was attributable to any physical or mental impairment. Nor did she offer a certification of disability from a licensed health care provider, which is required by this regulation.

While the Division's general lack of discretion to consider late-filed PFD applications controls the outcome of this appeal, it should be noted that when Ms. N. contemplated filing a PFD application in March 2022, she was arguably correct in concluding that she was not eligible for that year's dividend. As the Division's representative pointed out during the hearing, the question of whether individuals are eligible to receive a PFD depends on their intentions on the date their application is submitted. Residency for purposes of receiving a PFD takes more than mere physical presence in Alaska; there is an equally important subjective component regarding an individual's plans for the future. If a person is actively preparing to establish residency in another state within a few months' time, she lacks the intent to indefinitely remain in Alaska that is required for PFD eligibility.¹³

This is distinguishable from situations where Alaska residents might contemplate leaving the state at some undefined point in the future (perhaps while repeatedly shoveling out their driveways during a winter with record snowfall). Individuals can hold an intent to remain indefinitely in Alaska even if they do not plan to spend the entirety of their lives as state residents. But once generalized thoughts of relocating have matured to the point that a clear plan has been formed for moving to another state within the next few months, the intent to remain indefinitely in Alaska – which is an absolute requirement for PFD eligibility – has been lost.

Accordingly, under the circumstances presented here it is not possible for the Division overlook the late filing of Ms. N.'s 2022 PFD application. Even though Ms. N. demonstrated commendable honesty when she chose not to file a PFD application based upon her planned relocation to California, the laws and regulations the Division is obligated to uphold simply give it no leeway to grant the relief that Ms. N. seeks in this appeal.

¹³ *In re J.B.*, OAH No. 05-0318-PFD (Commissioner of Revenue 2005) (holding that "a person who, at the time of filing a dividend application, knows she will be moving from Alaska at a specific time to a specific place is not a state resident").

B. The late filing of Ms. N.’s formal appeal request is an independent basis for denying her appeal.

Ms. N.’s failure to timely request a formal appeal is a separate basis for denying her appeal. The Division’s regulations require formal PFD appeals to be filed within 30 days of the date an informal appeal is denied “unless the individual demonstrates a reasonable cause for the failure to file within this period.”¹⁴ Similarly, the administrative law judge may waive the appeal deadline if adherence to it “would work an injustice.”¹⁵ In past decisions, however, it has been recognized that waivers of PFD appeal deadlines have generally been limited to circumstances where actions by the Division created some level of confusion that “contributed to the delay in starting an appeal.”¹⁶

Here, the evidence shows that Ms. N. simply failed to take note of the Division’s efforts to inform her of the deadline for filing her formal appeal. Though her stated desire to confirm a California mailing address before filing her appeal request is understandable to some extent, this is not a situation where Ms. N. missed the deadline by a few days, or even a few weeks. Instead, Ms. N. was nearly two months late in filing her formal appeal. The passage of this much time, in combination with the Division’s reasonable efforts to advise Ms. N. of the deadline, compel the conclusion that her appeal is deniable on this separate basis.

IV. Conclusion

Since Ms. N. failed to file her PFD application by the statutory deadline of March 31, and thereafter failed to timely request a formal appeal, the Division’s denial of her 2022 dividend is AFFIRMED.

Dated: January 10, 2024

By: Signed
Signature
Max Garner
Name
Administrative Law Judge
Title

¹⁴ 15 AAC 05.010(b)(5).

¹⁵ 15 AAC 05.030(k).

¹⁶ *In re V.D.*, OAH No. 14-0943-PFD (Commissioner of Revenue 2014) (summarizing cases where consideration of late-filed appeals was granted and denied).

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 6th day of February, 2024.

By: Signed
Signature
Max Garner
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.]