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

In the Matter of	)	
	)	
T. AND N. J.	)	OAH No. 23-0026-PFD
	)	
	)	

DECISION

I. Introduction

T. and N. J. applied for the 2022 Permanent Fund Dividend. Their applications were mailed to the Permanent Fund Division on April 23, 2022, and received by the Division on April 27, 2022. Because PFD applications for 2022 were due by March 31, 2022, the Permanent Fund Dividend Division denied the applications initially and at the informal appeal level on the basis of untimeliness. The J.s requested a formal hearing by correspondence.[1]

The Division's denial is affirmed because the applications were filed late and did not qualify for any exception to the deadline. The law leaves no discretion to make an exception for the J.s.

II. Facts

T. J. and her adult son N. J. live in Community A. They have been Alaska residents since the fall of 2014.[2] They received PFDs for the past four years by filing electronically. They were emailed notice of the filing deadline for the 2022 PFD. However, they did not receive the notice because their email address changed when their provider went out of business.[3]

On April 14, 2022, Ms. J. contacted the Division, asking about whether it was possible to obtain a waiver or exemption for a late filed PFD application. The Division notified them of the two possible exceptions, the disability exception and the active military exception, and mailed them late application forms.[4] The J.s subsequently filed their applications for the 2022 PFD. Those applications are both dated April 22, 2022. They were mailed to the Division on April 23, 2022, and received by the Division on April 27, 2022.[5]

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[1] The J.s originally requested a telephonic hearing (Ex. 7). However, on January 24, 2023, they later changed that request, instead requesting to have the hearing by correspondence. Accordingly, this hearing was converted to one by correspondence on January 30, 2023.

[2] Ex. 1, pp. 3, 7.

[3] Ex. 2, p. 2.

[4] Ex. 2.

[5] Ex. 1.

The J.s' applications were both denied as having been filed after the March 31, 2022 deadline.[6] Neither Ms. J. or Mr. J. presented any evidence that they were disabled and prevented from filing their applications due to that disability, nor did they present any evidence that either of them were active military during 2021 or 2022.

The J.s requested an informal appeal to challenge the denial of their applications. In that appeal, they argued that they were not notified by the Division of the deadline for filing an appeal because their email provider suspended its service, and because there was no public notice of the deadline, by either newspaper or radio, in their locale.[7]

In response to the J.s' informal appeals, the Division wrote Ms. J. on November 2, 2022, advising her of the possible exceptions to the application filing deadline, and providing her until December 2, 2022 to provide information demonstrating that she fell within one of those exceptions.[8] The Division sent Mr. J. an identical letter on November 9, 2022, providing him with a deadline of December 9, 2022.[9] Both letters advised Ms. J. and Mr. J. that failure to respond by the deadline could lead to the denial of the application.[10]

The Division subsequently denied Ms. J. and Mr. J.'s informal appeals on December 7, 2022 and January 3, 2023, respectively.[11] The J.s then requested a formal hearing by telephone.[12] They subsequently requested that the hearing be changed to one by correspondence. That request was granted and an order setting out the schedule for the parties' filings was issued, giving the parties until February 27, 2023 to provide additional documents and written statements, and until March 13, 2023 to respond to each other's filings.

The J.s submitted their written argument and exhibits with the Division on January 26, 2023. The Division filed its position statement and exhibits on February 27, 2023. The J.s submitted their response with attachments on March 12, 2023. In their January 26, 2023 filing and their March 12, 2023 response, they attached information showing that the then Commissioner Mahoney and State Senator Bishop submitted opinion pieces advising citizens of the deadline for filing the 2022 application, which were published in the Anchorage, Fairbanks, and Sitka newspapers.

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6 Ex. 3.
7 Ex. 4.
8 Ex. 5, pp. 1 – 2.
9 Ex. 5, pp. 3 – 4.
10 Ex. 5, pp. 2, 4.
11 Ex. 6.
12 Ex. 7.

III. Discussion

The Alaska Statute that sets the application period for dividends is AS 43.23.011. Under that statute, the period for applying for a dividend ends on March 31 of the dividend year. In 2020, because of the pandemic, the Legislature adjusted that deadline to April 30, 2020, but the deadline provisions were not modified in any other way.[13] However, that was a one-time adjustment, which was not repeated for 2021 or 2022.

In passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant must be a member of the armed services.[14] Neither of the J.s are in the armed forces, and so the March 31, 2022 deadline was absolute for them. Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,[15] but again, neither of the J.s are in these categories and thus must apply by the March 31, 2022 deadline. It is undisputed that they did not.

The J.s make three arguments in support of their contention that their undisputedly late applications should be accepted. The first of these is that the deadline should be extended because it was extended in 2020 due to Covid, and it should be similarly extended for 2022. The deadline is established by AS 43.23.011. The legislature revised the statute to extend the deadline only for 2020. It, however, did not extend the deadline for 2021 or following years. Because the deadline in the statute controls, this argument is not persuasive. It should be noted that the J.s received the 2021 PFD, meaning that they were able to file by the March 31, 2021 deadline.

The J.s' second argument is that the Division is required to notify applicants by mail of the deadline. They reference AS 42.23.055(4) in support of their argument. That statute states that the Division "shall . . . assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends." They argue that because they live in a rural area of the state that the Division has an affirmative duty to assist them. In addressing this argument, it should be noted that the permanent fund dividend statutes and regulations do not require mailed notice to potential applicants, nor do they require actual notice of the deadlines to

13 § 10, ch 10 SLA 2020 (deadline adjusted in uncodified law).
14 AS 43.23.011(b), (c).
15 *See* AS 43.23.055(3), (7).

potential applicants.[16] The statute provides notice. The PFD website provides notice. And the J.s were provided actual notice by email. While the J.s have stated they did not receive that email notice, the lack of receipt is attributable to difficulties with their email provider, not to any deficiency on the Division's part. Accordingly, this argument is also not persuasive.

The J.s' final argument would require the Division to publish notice to potential applicants advising them of the application deadline. They point out that then Commissioner Mahoney and State Senator Bishop had an opinion piece advising applicants of the 2022 deadlines, which was published in the Anchorage Daily News, the Fairbanks Daily News-Miner, and the Sitka Sentinel. They argue that failure to have a similar opinion piece published in their own local newspaper, or via radio, was a violation of the Division's duty to assist rural residents and was a violation of equal protection. This argument is not persuasive for several independent reasons. First, as discussed above, it would create a duty not imposed by statute or regulation. Second, the mere assertion of an equal protection argument is insufficient. The mere fact that the J.s are rural residents does not demonstrate that the lack of published notice would constitute a denial of equal protection under constitutional standards. Third, the J.s were provided actual notice by email, although their emails were malfunctioning. Fourth, the information in the record shows that these were opinion pieces, not paid advertisements, and publication of opinion pieces is at the discretion of the local newspaper. The Division cannot compel a newspaper to publish anything. Accordingly, the Division could not have required the J.s' local newspaper, or their local radio station to notify the public of the application deadline. And finally, the J.s' argument is speculative. It assumes, without any proof, that their local media outlets were not advised of or provided a public opinion piece or public service announcement regarding the application deadline.

The J.s received the 2021 dividend, which had an application deadline for of March 31, 2021. They, unfortunately, did not file their 2022 applications on time. They do not fall within any of the allowed exceptions to the deadline requirements. While their computer difficulties may have contributed to them missing the filing deadline, the Department of Revenue is bound by the statutes laid down by the Legislature and by its own regulations, which set a black-and-white deadline. Under the law, the Department of Revenue has no discretion in this matter, and it cannot grant the J.s a 2022 dividend.

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16 *See* AS 43.23.055 for the Division's statutory obligations.

IV. Conclusion

Because their applications were filed after the deadline and did not qualify for any exception to the deadline, the Department of Revenue cannot grant Ms. J. or Mr. J. a dividend for 2022. This decision does not affect their ability to qualify in 2023 or future years.

Dated: March 22, 2023

SIGNED
Lawrence A. Pederson
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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of May, 2023.

By: SIGNED
Signature
Adam Crum
Name
Commissioner, Department of Revenue
Title

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