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

In the Matter of	)	
	)	
L. P. AND	)	OAH No. 23-0204-PFD
M. P. (A MINOR)	)	

DECISION

I. Introduction

L. P. of Village A., Alaska applied for a 2022 Permanent Fund Dividend (PFD) for himself and his son, M., by applications mailed from the post office in their village. The applications were both contained in an envelope that bore an April 2, 2022 postmark from a sorting facility, but none from the local post office. The PFD Division denied the applications, both initially and at the informal appeal level, on the basis of untimeliness.

Mr. P. requested a formal hearing by correspondence. To explore the matter in greater detail and supplement the written record, the administrative law judge set the matter for a telephonic hearing, which was held on April 24, 2023.

After careful consideration of the evidence, the undersigned concludes that the P.s satisfied the regulatory requirement for an exemption from the postmark deadline. The Division's denial of the applications is reversed.

II. Factual Background

L. P. is a 22-year-old resident of Village A.[1] He has a 3-year-old son, M., for whom he serves as a sponsor for PFD applications.[2] There is no evidence that L. P. is disabled, and he was not a member of the armed forces during the 2021 calendar year.[3]

The deadline for filing an application for a 2022 PFD was March 31, 2022. Mr. P. filled out paper applications for himself and his son, which he contends he deposited at the Village A. post office "on March twenty-something."[4] He claimed that the post office did

[1] Ex. 1, p. 1.
[2] Ex. 1, p. 6.
[3] Ex. 1, p. 1.
[4] Testimony of L. P. See *also* Ex. 5, p. 2 (stating, "We filed a week before deadline.")

not have mailing stamps at the time. He also said the weather was bad, so very few planes could fly in or out of the village.[5]

The applications were mailed in a single stamped envelope to the PFD Division in City A., which reached the PFD Division on April 5, 2022.[6] The envelope also contained the PFD application of S. B., who is Mr. P.'s partner and M.'s mother.

To get to City A., mail from Village A. is flown to City B., and then on to a United States Postal Service (USPS) sorting center, one of which is in Anchorage, where mail from different locations is sorted into batches before being sent out further for delivery to the recipient.[7]

The envelope containing the P.s' applications bore a postmark of April 2, 2022 from the sorting center in Anchorage. But there was no postmark from Village A.[8]

The Division denied the P.s' applications because they were not delivered or postmarked by the March 31, 2022 deadline.[9] After an unsuccessful informal appeal, Mr. P. requested a formal hearing by correspondence.[10] Because the written record was inconclusive and additional context was needed, the administrative law judge exercised her discretion to schedule a telephonic hearing. The case was consolidated for hearing purposes with two other cases also involving 2022 PFD applications from Village A., due to the common issues and evidence in the cases.[11] Several people testified at the hearing, including Mr. P. and D. D., who has worked as the postmaster at the Village A. post office for five years, pursuant to a contract between the local tribal council and the USPS.[12]

III. Discussion

AS 43.23.011 establishes the application period for filing for a dividend. Under that statute, the application period ends on March 31 of the dividend year.[13]

5 Testimony of L. P.; Ex. 5.
6 Ex. 2, p.1; Ex. 6.
7 Testimony of D. D.
8 Ex. 6.
9 Ex. 2.
10 Exs. 3-5.
11 The case was consolidated for hearing purposes with OAH 23-0142 (Dept. of Revenue 2023), and OAH 23-0203.
12 Under the contract, the tribal council provides postal services to Village A. Testimony of D. D.
13 AS 43.23.095(6).

There are only a few exceptions to the March 31 deadline. The exceptions are for military members who were eligible for imminent danger or hostile fire pay during the application period, disabled people whose disabilities prevented them from timely filing, and minors in specific circumstances.[14] There is no evidence that any of these categories applied to either of the P.s. Thus, the March 31 deadline was absolute for them.

Under the department's regulations, an application "must be received by the department or postmarked during the application period. . . to be considered timely filed."[15] There is, however, a regulation that addresses the issue of late postmarks. That regulation, 15 AAC 23.103(g), provides a pathway to eligibility for applicants who mailed an application timely, but it was postmarked on a later date. The regulation states in relevant part:

> 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. The department will deny a paper application postmarked after the application period, *unless the individual provides the department with an official statement from the United States Postal Service or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting.*

Here, Mr. P. testified credibly that he took the applications to the post office "on March twenty-something." But the only postmark on the envelope was from the Anchorage sorting center on April 2, which was after the filing deadline. Thus, the only way Mr. P. could be eligible for a dividend is if he provided an official USPS statement describing the circumstances under which the postal service incorrectly posted the application or caused a delay in posting.

The sworn testimony of Ms. D., the contracted USPS postmaster for Village A., constitutes such a statement. Ms. D. explained that although the post office has a barrel stamp, she was never instructed to stamp the mail.[16] Thus, she never postmarked any items brought to the post office for mailing, including PFD applications. It was not until she spoke with Division representative Peter Scott about the three Village A. PFD appeals that she realized the importance of postmarking applications. She stated, "I didn't know we had to postmark, you know, put a stamp on any mail, not just these, but any mail that goes out of Village A. I wasn't told to postmark. . . After doing things here, especially with the PFD applications,

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[14] AS 43.23.001(b) and (c); AS 43.23.055(3) and (7).

[15] 15 AAC 23.103(a).

[16] Testimony of D. D. A barrel stamp is often used to postmark mail. Testimony of Peter Scott.

just to show that the envelope went out on this day, I'll stamp it. . . I wasn't told to postmark anything that goes out."[17] She also recalled the weather being bad for about three days around the filing deadline, with high winds, rain, and wet snow. During particularly bad weather, planes cannot fly in and out of the village, causing the mail to be delayed.

Ms. D.'s error in failing to postmark the mail, which necessarily included the P.s' applications, explains why the only postmark on the envelope – the postmark from the sorting facility downstream in the mailing process from the village post office– is two days after the March 31 deadline. The failure to postmark an application is the equivalent of an incorrect postmarking. Ms. D.'s sworn testimony satisfies the requirement of 15 AAC 23.103(g) as an official USPS statement explaining the specific circumstances that led to this postmarking error impacting the P.s' applications. This supports the contention that the P.s' applications were delivered to the village post office in sufficient time to have been postmarked on March 31, 2022.

IV. Conclusion

Because the P.s met the regulatory requirements for an exemption from the postmark deadline, the Division's denial of their applications for the 2022 PFD is reversed.

DATED: July 17, 2023.

Signed

Lisa M. Toussaint
Administrative Law Judge

[17] Testimony of D. D.

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 11th day of August, 2023.

By: *Signed*
Signature
Lisa M. Toussaint
Name
Administrative Law Judge
Title

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