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

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| In the Matter of | ) | |
| | ) | |
| X. D. AND | ) | |
| N. M. D. (MINOR) | ) | |
| | ) | OAH No. 23-0128-PFD |
| 2022 Permanent Fund Dividends | ) | |

# DECISION

## I. Introduction

The Permanent Fund Dividend Division denied the applications of X. D. and his minor child for a 2022 Permanent Fund Dividend (PFD) because the applications were untimely. Mr. D. appealed and requested a formal hearing by correspondence. Because the evidence shows the applications were filed late and did not qualify for an exception to the deadline, the Division's denial of the applications is affirmed.

## II. Facts

X. D. is a long-time Alaska resident who has received many dividends in the past.[1] He resides in remote Village A. with his fifteen-year-old adopted daughter, N. M. There is no evidence that either Mr. D. or N. M. are disabled, and no claim of disability has been made on their behalf. Mr. D. was not an active-duty member of the armed forces in 2022.[2]

Mr. D. filled out applications for a 2022 PFD for himself and N. M., and he signed the applications on March 29, 2022.[3] The two applications were mailed to the PFD Division in Juneau, where they were received on April 18, 2022.[4]

The envelope containing the two applications bore a postmark stamp from the Village A. post office of April 1, 2022.[5] In 2022, the March 31 deadline for filing a PFD fell on a Friday. The business hours for the post office in Village A. are listed on the United States Postal Service website as Monday through Friday, and partial hours on Saturday.[6]

1 Ex. 1, p. 5.
2 Ex. 1, p. 1.
3 Ex. 1.
4 Ex 1, p. 1.
5 Ex. 7.
6 Division's Position Statement (referencing https://tool.usps.com/find-location.hum?location=1381603).

After the Division denied the applications as untimely, and the Division held to its position through the informal appeal process, Mr. D. requested a formal hearing for the applications.[7] In the space on the form to explain his reasons for appealing, he wrote, “Due to Post Office break-ins in Village of Village A., Post Office has been closed til re-newal. Can’t do money orders etc. – been checking mail in Village A. High School twice a week.”[8] He checked the box on the form for a hearing by written correspondence, meaning an oral hearing would not be held, but each party could file written arguments or other documents for consideration. The parties were given until March 24, 2023 to submit additional materials, and until April 7, 2023 to respond to information received by the other.

Mr. D. did not file any additional information. The Division filed a position statement and hearing exhibits, including an email exchange between Pete Scott and United States Postal Service Manager N. N. regarding the circumstances in the Village A. post office on March 31, 2022. Ms. N. reported that the postmaster was not on duty that day, but there was “postmaster relief.”[9] There were no reported closures shown for the day, but no reported sales for that day either, so “[i]t could be that the Postmaster relief did not go into work but did not report it.”[10] Further, Ms. N. wrote that the last reported break-in at the post office was in 2021 – well before the March 31, 2022 deadline.[11]

## III. Discussion

The only impediment to Mr. D. and N. M. receiving 2022 PFDs is the timeliness of their applications. The general rule is that a PFD application “must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed.”[12] The application period ends on March 31 of the dividend year. The only exceptions to the March 31 deadline are for military members who were eligible for imminent danger or hostile fire pay during the application period, for certain disabled people when their disability prevents timely filing, and for certain children when their parents or guardians do not timely apply on their behalf.[13] There is no evidence that Mr. D.

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7 Exs. 2, 3,5, and 6.
8 Ex. 6, p. 2.
9 Ex. 8, p. 1.
10 Ex. 8, p. 1.
11 Ex.8, p. 1.
12 AS 43.23.011(a); 15 AAC 23.103(a) and (g).
13 AS 43.23.011(b) –(c).

or N. M. fell into any of these categories. Thus, the March 31 deadline was absolute for them.

Whether a mailed application is considered timely posted is established by a Department of Revenue regulation, 15 AAC 23.103(g), the relevant portion of which reads:

> 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, 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. D.'s and N. M.'s applications were postmarked on April 1 – after the March 31 deadline. Under 15 AAC 23.103(g), there was only one way around the late postmark: Mr. D. would have had to get an official statement from the postal service showing that incorrect handling or delay by the postal service caused the postmark to be late.

Mr. D. wrote on his appeal form that the post office was closed due to break-ins, presumably meaning the post office was closed when he tried to mail the applications. But the only official statement by the Postal Service in the record indicates that the post office was most likely open, and does not support the recollection that it was closed on March 31, 2022 because of break-ins. Without an official statement from the Postal Service supporting the idea that the April 1 postmark was due to a Postal Service deficiency, the applications cannot be considered timely. The Department of Revenue is bound by its own regulations. The regulations leave no discretion in this matter.

**Mr. D.'s minor child, N. M., may apply for her 2022 PFD on her own behalf when she has reached eighteen, so long as she does so before reaching the age of twenty.**[14] **Because this opportunity will be lost after she reaches twenty, Mr. D. should remind N. M. to apply immediately after her eighteenth birthday.**

## IV. Conclusion

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[14] 15 AAC 23.133(b)-(c)

The Division's decision denying the 2022 applications of Mr. D. and N. M. D. is affirmed.  This decision does not affect their eligibility for dividends in 2023 or future years.

DATED:  May 4, 2023.

SIGNED
Lisa M. Toussaint
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 30th day of May, 2023.

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

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