

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

In the Matter of	)	
	)	
B. N.	)	OAH No. 23-0142-PFD
	)	

DECISION

I. Introduction

B. N.’s application for 2022 Permanent Fund Dividend (PFD), mailed from the post office in her village, arrived at the Department of Revenue, PFD Division eleven days after the application period had closed. The envelope bore a postmark with an illegible date from a sorting facility, but none from the local post office. The PFD Division denied the application, both initially and at the informal appeal level, on the basis of untimeliness.

Ms. N. 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 March 23 and April 24, 2023.

After careful consideration of the evidence, the undersigned concludes that Ms. N. timely delivered her application to the post office for mailing. The Division’s denial of the application is reversed.

II. Factual Background

B. N. is a 24-year old resident of Village A.¹ There is no evidence that she is disabled, and she was not a member of the armed forces during the 2021 calendar year.²

A. PFD Application

The deadline for filing an application for a 2022 PFD was March 31, 2022. Ms. N. filled out a paper application for a 2022 PFD, which she signed on February 9, 2022.³

The application was mailed to the PFD Division in City A., where it was received on April 11, 2022.⁴ The envelope containing the application bore a machine-generated “Alaskan Frontier” postmark typical of those affixed at sorting centers, where mail from

¹ Ex. 1, p. 1.
² Ex. 1, p. 1.
³ Ex. 1, p. 4.
⁴ Ex. 1, p. 1; Ex. 8.

different locations is sorted into batches before delivery to the recipient.⁵ The date and time of the Alaskan Frontier postmark is illegible. The envelope lacked a postmark from the post office in Village A.⁶ The Division denied Ms. N.’s application because it was not received or postmarked within the March 31, 2022 filing deadline.⁷

B. Informal Appeal

Ms. N. filed an informal appeal of the Division’s decision.⁸ On the informal appeal form, Ms. N. wrote that she remembered taking her application to the local post office before the March 31 deadline. She recounted that the weather was bad for most of January through May; “[o]n those days, the post office would be closed due to weather as well as the planes that could not fly.”⁹ The envelope containing the informal appeal bore an “Alaskan Frontier” stamp dated July 15, 2022, and was received by the PFD Division on July 18, 2023.

Ms. N. also provided a written statement from D. D., who has worked as the postmaster in Village A. for five years. Ms. D. explained that “[w]hen B. sent/mailed out her application,” the “weather was unpredictable with high winds/rain/wet snow,” and “mail that usually goes out daily were delayed” and did not go out for several days.¹⁰ The envelope containing Ms. D.’s statement had an “Alaskan Frontier” stamp dated November 25, 2022, and was received by the PFD Division on November 28, 2023.

The informal appeal was unsuccessful.

C. Formal Appeal

Ms. N. requested a formal hearing by correspondence.¹¹ In the space on the form to specify her reasons for appealing, she reiterated that there was poor weather in March 2022, “and our post office was closed most of the days before deadline.”¹² The Division provided a position statement and hearing exhibits. Because the written record was inconclusive and

⁵ Ex. 8.

⁶ The United States Postal Service has a contract with an Alaska Native organization to provide postal services to Village A. Testimony of D. D. Testimony of D. D.

⁷ Ex. 2.

⁸ Ex. 3.

⁹ Ex. 3, p. 2. Ms. N. also wrote that “sometimes our postmaster makes mistakes too.” Ex. 3, p. 2.

¹⁰ Ex. 5.

¹¹ Ex. 7.

¹² Ex. 7, p. 2.

more context was needed, the administrative law judge exercised her discretion to schedule a telephonic hearing.

As for when Ms. N. brought the application to the post office in Village A. for mailing, Ms. N. testified that she did not remember the exact date, but she thought it was towards the end of February or early March 2022.¹³ Ms. D. suggested the date may have been closer to, albeit still before, the filing deadline. She recalled the weather being bad for about three days when Ms. N. brought in her application, and when asked by Mr. Scott whether those three days were March 30, March 31, and April 1, she replied, “Should be like that; yes.”¹⁴

Ms. D. also testified that she did not postmark the envelope containing Ms. N.’s application. The post office has a barrel stamp, but Ms. D. was never told to stamp the mail.¹⁵ Thus, she never postmarked any items brought to the post office for mailing, including Ms. N.’s PFD application. It was not until she spoke with Mr. Scott in connection with this case that she learned of the importance of postmarking PFD 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, 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.”¹⁶

III. Discussion

The analysis in this case begins with AS 43.23.011, the statute that establishes the application period for filing for a PFD. 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, disabled people whose disabilities prevented them from timely filing, and minors in specific

¹³ Testimony of B. N.

¹⁴ Testimony of D. D.

¹⁵ Ms. D. testified that the post office has had the barrel stamp for at least as long as she has worked there. Testimony of D. D.

¹⁶ Testimony of D. D. Ms. D. also stated that “from now on, we’re going to postmark applications legibly, so you guys can read the postmark. But at that time, I made a mistake with all applications that tried to go out. I didn’t know I had to postmark the envelopes.” Testimony of D. D.

circumstances.¹⁷ There is no evidence that Ms. N. falls into any of these categories. Thus, the March 31 deadline was absolute for her.

Whether a mailed application is considered timely filed is established by a Department of Revenue regulation, 15 AAC 23.103(g). The regulation states that an application is timely if it was “delivered to the post office in sufficient time to be postmarked before the end of the application period.” That is likely what happened here. Although the application lacks a postmark from the Village A. post office showing the exact date it was deposited there, Ms. D. testified credibly that Ms. N. brought her application to the Village A. post office prior to the March 31 filing deadline. Ms. D.’s testimony about exactly when application was delivered to the post office differed to some degree from Ms. N.’s (Ms. N. could not recall the date, but thought it was sometime in late February or early March, while Ms. D. suggested it may have closer to, albeit still before, the filing deadline), but these differences are not unexpected given the passage of time (approximately one year). Although the April 11 arrival date at the PFD could suggest the application was delivered to the post office late, but I find it more likely that Ms. N. brought the application to the post office on time, and a weather delay or other problem prevented it from being sent out in time to arrive. Although the exact date is unclear, I find that the preponderance of the evidence shows that Ms. N. took her application to the Village A. post office before the March 31 deadline. Thus, although the application was not actually postmarked because it was not Ms. D.’s practice to do so, the application was nevertheless delivered to the post office *with sufficient time for it be postmarked* before the end of the application period. As explained in *In re T.J.*, OAH No. 16-1454-PFD, the requirement that an application be “delivered to the post office in sufficient time to be postmarked before the end of the application period” is, in some circumstances, “slightly different from actually *being* postmarked during the application period.”¹⁸

Other language in 15 AAC 23.103(g) provides that “*an application postmarked after the deadline* will be denied unless the applicant produces an official statement” from the postal authorities describing the “specific circumstances under which the postal service incorrectly posted the individual’s application or caused a delay in posting.” This language

¹⁷ AS 43.23.001(b) and (c); AS 43.23.055(3) and (7).

¹⁸ Published at <https://aws.state.ak.us/OAH/Decision/Display?rec=6940> .

inapplicable here, however, as Ms. N.’s application does not actually bear a postmark after the March 31 deadline – just the “Alaskan Frontier” stamp with an illegible date.

IV. Conclusion

Because Ms. N.’s application for a 2022 PFD was delivered to the Village A. post office in sufficient time for it to be postmarked before the filing deadline, the Division’s denial of the application is reversed.

Dated: June 12, 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 6th day of July, 2023.

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

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