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

In the Matter of T N.U 2022 Permanent Fund Dividend	OAH No. 23-0037-PFD
In the Matter of R.U 2022 Permanent Fund Dividend	OAH No. 23-0029-PFD
In the Matter of F B.U and E.U (minor) 2022 Permanent Fund Dividend	OAH No. 23-0028-PFD

DECISION

I. Introduction

Four members of the U family of Town A, Alaska applied for a 2022 Permanent Fund Dividend (PFD) by mailed applications all contained in an envelope that bore an April 5, 2022 postmark. Because PFD applications for 2022 were due by March 31, the Permanent Fund Dividend Division denied the applications initially and at the informal appeal level on the basis of untimeliness. In separate appeals, the Us requested formal hearings by correspondence. A short consolidated telephonic hearing was later held to supplement the written materials gathered by correspondence.

These matters are hereby consolidated for decision pursuant to 2 AAC 64.190(a). The division's denial of each application is reversed because the Us met the regulatory requirement for receiving an exemption from the postmark deadline.

II. Factual Background

T (T) and F.U are residents of the village of Town A, both in their early sixties. They have a son E., still a minor, for whom F serves as sponsor in connection with PFD applications. Also in the household is daughter R.U, who has just become an adult. There is no evidence that any of the adults is disabled, and they have not been members of the armed forces in 2019-20.[1]

The deadline for filing for the 2022 dividend was March 31, a Thursday. In 2022, the Us mailed in paper applications. They contend that T.U deposited the applications with a mail clerk at the Town A Post Office on the due date.

All four of the Us' applications were in a single stamped envelope which reached the PFD Division in Juneau on Thursday, April 7, 2022.[2] It bore three postmarks. One was a machine generated "Alaskan Frontier" cancellation of the kind that is affixed at sorting centers. This cancellation was dated "5 APR 2022 PM".[3] The other two were barrel stamp cancellations, slightly overlapping, that were made over the postage stamps. They were of a type sometimes associated with village post offices in Alaska. Both barrel cancellations were completely illegible.

The Division denied the Us' applications because they were not delivered or postmarked within the March 31, 2022 deadline. Each family member's informal appeal was unsuccessful. On approximately January 6, 2023, all of them requested a formal hearing by correspondence. The Division made a written submission for the hearing, while the Us simply relied on materials they had already submitted earlier in the process. Because the paper record was inconclusive and more context was needed, the administrative law judge exercised his discretion to schedule a telephonic proceeding, at which two witnesses testified under oath.

III. Discussion

A. Compliance with PFD Deadline

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 passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services.[4] The Us' applications show that they were not in the armed forces, and so the March 31 deadline was absolute for

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1 *Cf.* AS 43.23.011(c).

2 The envelope is imaged at the end of Exhibit 1 in all three case records.

3 Such postmarks have text that generally falls to the left of the postage stamps, and a set of wavy lines that continue to the right across the stamps. Most postal customers are very familiar with this kind of postmark. A sample on a government website appears here: https://ttc.lacounty.gov/wp-content/uploads/2018/08/Standard-Postage-Stamps.png.

4 AS 43.23.011(b), (c).

them. Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,[5] but again, these do not apply to the adult members of the U family.[6]

There is, however, a regulation that directly addresses the issue of late postmarks and that provides applicants with a way to preserve eligibility if they mail an application timely but it is postmarked on a later date. 15 AAC 23.103(g) contains the following relevant passage:

> 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.*[7]

The U family has provided just such a statement. The USPS contractor for Town A, Q.C, wrote and signed a statement explaining that the applications for the U family were brought into her post office on March 31, 2022, "but I didn't stamp them on the 31st and accidentally post marked them for April 4, 2022."[8] While the statement is not on USPS letterhead, it is stamped at the top with a U.S. Postal Service rubber stamp for Town A issued by the USPS. Town A's post office does not have letterhead paper.[9]

The PFD Division raised some legitimate concerns about this statement and, to obtain a fuller explanation of the matter, Ms. C was asked to testify. She did so. She explained under oath that on March 31 she left the post office partway through the day to attend a funeral in Town B. She did not return until a few days later. The U family mail remained in the post office. She testified that a substitute, whom she named, manned the counter at the post office, but the substitute did not know the procedure for postmarking. Ms. C testified that she manually postmarked the envelope when she returned, before forwarding it for delivery.

Ms. C believes she postmarked the envelope on April 4. The Division points out that the envelope bears a postmark of April 5. However, the April 5 postmark is a machine postmark

[5] *See* AS 43.23.055(3), (7).

[6] A provision for minors to apply after they reach majority could be applicable to E.U if his 2022 application were found to be past the deadline.

[7] Italics added.

[8] *E.g.,* 23-0029-PFD Ex. 7, p. 8. The statement is in all three case records.

[9] Testimony of Q.C.

from a downstream USPS facility. Town A has no machine for affixing such a postmark.[10] Importantly, the letter *also* has barrel postmarks from hand-cancellation, albeit illegible. Thus, the envelope as it arrived in Juneau is not inconsistent with Ms. C's explanation that she hand-canceled it on April 4.

There remain some areas of concern about the evidence of how the U applications were received in the post office in Town A. Three months after the event, Mr. U said that his own recollection was that he had brought the applications into the post office and handed them to the substitute,[11] whereas Ms. C's current recollection (a year later) is that she herself took the applications from Mr. U.[12] There are some possible explanations for the differing recollections, however, including (as Mr. U testified) that both postal workers may have been in the post office during the overlap prior to Ms. C's departure for Town B, and that he came into the office during that overlap. Another concern is that Ms. C's written statement suggests (although it does not quite say so) that each of the Us' applications were brought in individually by the four members of the family. However, her sworn testimony is clear that it was only Mr. U who came in and, after listening to her firsthand, I think the best explanation for the ambiguity of the letter is that Ms. C speaks English as a second language and simply did not perceive that her letter gave the impression that all four Us came in.

On balance, I find that the Us have met their burden. They have supplied an official postal service statement describing specific circumstances that led to incorrect postmarking of the application envelope, which is what 15 AAC 23.103(g) requires them to do. The evidence surrounding the statement is ambiguous, but it does not rise to the level that I can reject the statement as fundamentally untrue. The USPS statement supports the contention that the Us' applications were delivered to the village post office in sufficient time that they ought to have been postmarked on March 31, 2022.

B. Eligible Sponsor

By the time of the Informal Appeal Decisions, the Division's sole basis for denial of the three adult applications in this case was its concern about whether they had been submitted within the filing deadline. As to E.U, however, the Informal Appeal Decision states a separate

[10] Ms. C testified that she can only hand-cancel mail in Town A.
[11] 23-0037-PFD, Ex. 3, p. 2.
[12] Testimony of Ms. C.

ground for denial: that he had no eligible sponsor.[13] This is a completely derivative ground, based on the finding that his mother, who acted as his sponsor, was not eligible. Since that underlying finding is being reversed, E. now has an eligible sponsor.

IV. Conclusion

The denials of the applications of T, F, R, and E.U for the 2022 Permanent Fund Dividend are reversed.

DATED this 16th day of March, 2023.

By: *Signed*
Christopher Kennedy
Administrative Law Judge

[13] 23-0028-PFD, Ex. 6, pp. 7-8.

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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of April, 2023.

By: *Signed*

Christopher Kennedy
Administrative Law Judge

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