

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

In the Matter of	)	
	)	
K. SR. & B. J. AND M., C., & K. II	)	OAH No. 21-2488-PFD
	)	
	)	
_____	)	

DECISION

I. Introduction

B. and K. J. and their minor children M., C., and K. II applied for 2021 Permanent Fund Dividends (“PFD”). The Department of Revenue Permanent Fund Dividend Division (“Division”) did not receive the J.s’ applications until two weeks after the deadline and therefore denied them as untimely. The J.s are responsible for ensuring their applications are timely and for providing evidence of timeliness on appeal. The J.s did not meet that burden and thus the Division’s decisions are affirmed.

II. Facts

The J.s have received PFDs for many years. PFD applications are due by March 31 annually. For the 2021 PFD, the J.s submitted paper applications. Ms. J. signed her application and as sponsor on her children’s applications on March 21, 2021.¹ Mr. J. signed his application on March 31, 2021.²

The Division received these applications on April 12, 2021 in a single envelope that bore several stamps, but no postmark.³ The Division denied the applications as untimely.⁴ The J.s requested an informal appeal, stating that their mail had been stolen and that neighbors found the applications and mailed them.⁵ Ms. J. further stated on her informal appeal request that the Division should “[b]lame the pandemic” and on M. and C.’s informal appeal requests, “Pandemic – mail late.”⁶ The Division again denied the applications as untimely.⁷

¹ Ex. 1 at 4, 14, 18, 22.
² Ex. 1 at 10
³ Ex. 1 at 5.
⁴ Ex. 2.
⁵ Ex. 3 at 2, 4, 6, 7, 10
⁶ *Id.* at 2, 6, 8.
⁷ Ex. 4.

The J.s then requested this formal appeal, stating “this year I was in the village with no internet — I had paper copies which were mailed,” “Post office (in village was closed,” “[h]usband mailed in time,” and “[d]ue to COVID — Everything is hay-wire.”⁸

According to Division notes from a phone call with Ms. J., she stated she was in Town A for a funeral and the post office there was closed, so she sent the paper applications to Mr. J. by plane and he then mailed all of the J.’s applications.⁹ Ms. J. further claimed that a “neighbor informed her that there was some vandalism to the mailboxes and that their letter to the PFD was found in the snow along with other mail and was then remailed to the PFD office.”¹⁰

The Division contacted the United States Postal Service regarding the J.s’ stolen mail claims. The Postal Service responded that there were no reports of thefts in the J.s’ area for City A for March 21-31, 2021 or anywhere in City A for the entire month of March 2021.¹¹

A hearing was noticed for January 11, 2022. The J.s did not appear and no further evidence was taken.

III. Discussion

A. The J.s Did Not Have Reasonable Cause for Failing to Appear for the Hearing.

For a PFD appeal, if an applicant requests a hearing but then fails to appear, the hearing officer may issue a decision without taking further evidence unless the applicant shows “reasonable cause” for the failure to appear within ten days.¹² The J.s requested a hearing and were notified that it would take place by phone on January 11, 2022. The Administrative Law Judge called the J.s for the hearing at their phone number of record, but they did not answer or timely respond to a voicemail left at that number. Later that day, Ms. J. emailed the Division that she had been sick for several days.¹³ After being forwarded this email, OAH let Ms. J. know that the Administrative Law Judge would consider her email as a request to reschedule for reasonable cause and advised her of the deadline for Mr. J. to submit his own reasonable cause showing. Mr. and Mrs. J. did not submit anything further.

For purposes of a PFD appeal, “reasonable cause” is not defined in statute or regulation. In general, though, reasonable cause is “something beyond the requesting party’s control, such as

⁸ Ex. 5 at 2.

⁹ Ex. 6.

¹⁰ Id.

¹¹ Ex. 7.

¹² 15 AAC 05.030(j).

¹³ January 11, 2022 email from Ms. J.

a flat tire, medical emergency, or a snowstorm” that prevents the person from attending the hearing or timely seeking a postponement.¹⁴ Here, Mr. J. did not submit any explanation for his failure to participate in the hearing. Ms. J., who also filed for her children as sponsor, stated that she was ill. While it is unfortunate that Ms. J. was under the weather, her explanation did not indicate any sort of medical emergency or other force outside her control that prevented her from answering the phone to participate in the hearing or contacting OAH beforehand to reschedule the hearing. Accordingly, the J.s did not show reasonable cause for failing to participate in the hearing as scheduled. This decision therefore is based on positions statement and exhibits provided by the Division, which includes the J.’s appeal requests and stated basis for appeal.

B. The J.s Did Not File Timely 2021 PFD Applications.

PFD applications are due March 31 each year.¹⁵ The only potential exceptions to this deadline are for active duty military, which the J.s are not.¹⁶

“It is an individual’s responsibility to ensure that an application is timely.”¹⁷ To be timely, a paper application either needs to be timely delivered to the Division during business hours or “delivered to the post office in sufficient time to be postmarked before the end of the application period.”¹⁸ The J.s have the burden of proving here that their applications were timely.¹⁹

The J.s did not meet that burden. The applications Ms. J. signed for herself and her children are signed with a date of March 21. According to Ms. J. she had those applications flown to Mr. J. in City A to mail. He then signed his own application on March 31. Thus the earliest date Mr. J. could have mailed the applications was the due date itself, March 31, 2021. According to Ms. J., her husband mailed the envelope with the applications via their residential mailbox. The J.s had an obligation to deliver the envelope to a *post office* in time for a March 31 postmark.²⁰ It is unclear whether placing the envelope in a residential mailbox on March 31 would have been sufficiently early for the envelope to be delivered to a post office for a postmark the same day.

¹⁴ In re C D. T, OAH No. 14-0640-CSS (Dep’t of Revenue 2014) at 2.

¹⁵ AS 43.23.011(a).

¹⁶ AS 43.23.011(b), (c).

¹⁷ 15 AAC 23.103(g).

¹⁸ Id.

¹⁹ 15 AAC 05.030(h).

²⁰ 15 AAC 23.103(g).

There is no postmark on the envelope to support the J.s' claim that they timely mailed it. Nor is there any evidence to support their claims of stolen mail and COVID-related mail delays. Indeed, the Postal Service stated there were no reports of theft.

The J.s were responsible for ensuring their applications were postmarked by March 31 and for providing evidence to show that they did so. They did not. Accordingly, the Division's denial of their applications is affirmed.

As the Division noted in its position statement, the J. children will be eligible to file for 2021 PFDs when they turn 18.²¹

IV. Conclusion

The J.s' PFD application were late. Mr. J. did not sign his application until the March 31 deadline and the Division did not receive the applications for another two weeks, indicating they were mailed well after the deadline. The J.s did not provide evidence to support their claims that the Postal Service was responsible for the delay, nor do they qualify for an exception to the deadline. The Division's decisions denying the J.s' applications are affirmed.

Dated: January 25, 2022

SIGNED
Rebecca Kruse
Administrative Law Judge

²¹ 15 AAC 23.133(b)

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 23rd day of February, 2022.

By: SIGNED

Signature

Rebecca D. Kruse

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.]