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

In the Matter of	)	
	)	
H. X.	)	OAH No. 22-0349-PFD
	)	
2021 Permanent Fund Dividend	)	

DECISION

I. Introduction

The 2021 Permanent Fund Dividend (PFD) application for H. N. X. arrived at the Department of Revenue on the second day after the application period had closed, bearing no postmark. The Permanent Fund Dividend Division has denied the application, both initially and at the informal appeal level, on the basis of untimeliness.

Mr. X. requested a formal hearing by correspondence. Wishing to explore the matter in more detail, the administrative law judge set the matter for an oral hearing. This was held on June 14, 2022, with Mr. X. providing sworn testimony. After considering the testimony, written record, and federal regulations on mail delivery, the undersigned must reverse the Division's denial because it is more likely than not that Mr. X. met the regulatory criteria for a timely application.

II. Facts

Mr. X. is a gentleman in his upper sixties who has received dividends nearly every year since the program was established.[1] He lives in Town A, a town off the road system that has the zip code 00000. Almost 1000 miles from Juneau, Town A is not within the service area of the U.S. Postal Service Juneau Sectional Center Facility (SCF), and thus does not benefit from the relatively quick delivery times for intra-SCF mail.

Mr. X. mailed his PFD application from Town A in 2021, which is his usual practice when applying for the dividend. An experienced applicant, he is acutely aware of the deadline for applying, and he seems to be very familiar with the pickup time for mail deposited in Town A. He frankly admits that he does not have a specific recollection of mailing this particular application, but he believes he would remember if he had been depositing it after the deadline. He thinks he most likely mailed it on the 30th or 31st. His practice when he mails anything is to use the mail slot inside the post office.

In 2021, the March 31 deadline for filing for a PFD fell on a Wednesday. Mr. X.'s application arrived at the PFD Division in Juneau on Friday, April 2, 2021.[2] The Division reports that all mail is delivered to it at about 9:00 in the morning.[3]

The envelope in which the application arrived has been preserved for the record. It has no postmark on it.[4]

The PFD Division implicitly contends that Mr. X. may have mailed his application on April 1, 2021. However, if Mr. X. mailed the application in Town A on April 1 (or after post office hours on March 31), the standard delivery time to Juneau would yield a delivery date of Monday, April 5. Delivery the morning of April 2 would have been much faster than normal. This is because a four-delivery-day service standard applies to mail posted in Town A for delivery in the 998 zip codes (Juneau).[5] For the envelope to have been delivered to the PFD Division on Friday, April 2 according to the USPS service standard for Town A-Juneau first class mail, it would need to have been mailed in Town A on Monday, March 30.

Unrelated to the above, Mr. X. seems to have mailed in an incomplete application, omitting to include the page that lists verifiers and has a signature line. The Division's normal practice when people do this is to treat the application as received as soon as the incomplete document arrives, but to contact the applicant and provide an opportunity to send in the missing page.[6]

III. Discussion

In formal hearings regarding PFDs, the individual challenging the Division's initial decision "has the burden of proving that the action . . . is incorrect."[7] This has to be proven by the preponderance of the evidence,[8] meaning that Mr. X. must show that the Division's conclusion that his application was untimely was *probably* incorrect.

Analysis of this begins with the Alaska Statute that sets the application period for dividends, AS 43.23.011. 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

---

1 Ex. 1, pp. 4-5.
2 Ex. 1, pp. 1 and 3.
3 Statement of Peter Scott at hearing.
4 Ex. 1, p. 3.
5 The four-day service standard for Town A-Juneau mail is found at 39 C.F.R § 121.1(d)(6).
6 Statement of Peter Scott at hearing. Incompleteness was not a reason given for denying this application.
7 15 AAC 05.030(h).
8 2 AAC 64.290(c).

eligible for either of them, the applicant has to be both a member of the armed services and eligible for hostile fire or imminent danger pay.[9] Mr. X. was not in the armed forces, and so the March 31 deadline was absolute for him. Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,[10] but again, Mr. X. is not in these categories and thus must show he most likely applied by March 31 of the dividend year.

Through regulations, the Department of Revenue has set out the details of how the March 31 deadline will be applied. Under 15 AAC 23.103(a), the application "must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." This is the regulation that usually resolves timeliness disputes regarding PFD applications. However, there is another, more specific portion of the same regulation which indicates 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," which, in some circumstances—including the ones in this case—is slightly different from actually *being* postmarked during the application period.[11]

That regulation goes on to provide that an application "postmarked after the application period" 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."[12] Though it was the focus of some of the argument in this case, this additional sentence is not applicable here, because this application was not "postmarked after the application period."

The problem here is simply that the postmark is absent. And in that situation, the regulation is clear that the single question to be answered is whether this application was "delivered to the post office in sufficient time to be postmarked before the end of the application period."

In this case, it is highly implausible that an ordinary first-class letter reaching the post office in Town A on April 1, 2021 would be delivered to a recipient in Juneau at 9:00 a.m. the

---

9 AS 43.23.011(b), (c).

10 *See* AS 43.23.055(3), (7).

11 15 AAC 23.103(g). Notably, in other contexts, the PFD Division has long interpreted the timeliness regulation in accordance with this "in sufficient time" clarifying language. Thus, the Division has taken the position in this and other hearings that even if an envelope bears no postmark and arrives after March 31, it will be treated as timely if the person has a USPS tracking record that shows the mail was deposited before the deadline. Tracking information is evidence of mailing, but it is not a postmark.

next day. It is far more likely that a letter delivered in Juneau by that time must have reached the post office in Town A on approximately March 30. A March 30 mailing date also accords with Mr. X.'s credible testimony. A letter mailed on March 30 is mailed "in sufficient time" for a postmark no later than March 31.

Based on the totality of this evidence, I find that Mr. X. has met his burden of showing by a preponderance of the evidence that his application was delivered to the post office in sufficient time to be postmarked by March 31, 2021.

Because Mr. X.'s application was incomplete, the determination that it was timely does not fully resolve his eligibility. While the PFD Division did not deny this application for incompleteness, the fact remains that no dividend can be paid unless Mr. X. provides the final portion of his application, with a signature.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the 2021 dividend to H. N. X. is reversed. This matter is remanded to the PFD Division to provide Mr. X. with an opportunity to complete his application. If he does not complete his application within a reasonable time and meet all eligibility criteria not addressed in this decision, the Division is not precluded from issuing a new denial.

Dated this 20th day of June, 2022.

By: SIGNED
Christopher Kennedy
Administrative Law Judge

---

[12] *Id.*

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order 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 14th day of July, 2022.

By: SIGNED
Signature

Christopher Kennedy
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.]