

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

In the Matter of	)	
	)	
K.T AND B.O & U.T (MINORS)	)	OAH No. 22-0573-PFD
	)	
_____	)	

DECISION

I. Introduction

The Permanent Fund Dividend Division (“Division”) denied 2021 Permanent Fund Dividend (“PFD”) applications for K.T and minor children B.O and U.T because the applications were untimely. Ms. T then submitted an untimely informal appeal. Here on formal appeal, the Division has moved to dismiss for failure to timely appeal, but also addressed the merits of the appeal. There are strict deadlines for applying for PFDs and for appealing PFD decisions, with few, very limited exceptions. Ms. T appealed after the deadline and on that basis alone this appeal is dismissed. Even if she had timely appealed, the Division’s decision would be affirmed because Ms. T failed to provide evidence that she timely mailed the applications or could qualify for an exception.

II. Background

A PFD application must be received or postmarked by March 31 of the dividend year.¹ The only exceptions to this deadline are for active military servicemembers under specific circumstances.² Minors reaching the age of majority and disabled people may also apply for prior year dividends under limited circumstances.³

K.T submitted 2021 PFD applications for herself and B.O and U.T with a signature date of January 19, 2021.⁴ On her application, Ms. T marked that she was not an active military servicemember.⁵ The Division did not receive these applications until April 14, 2021.⁶ The postmark date on the envelope is illegible.⁷ A Division representative testified that the Division

¹ AS 43.23.011(a); 15 AAC 23.103(a).
² AS 43.23.011(b), (c).
³ 15 AAC 23.133.
⁴ Ex. 1 at 4, 9, 13.
⁵ Ex. 1 at 1.
⁶ Ex. 1.
⁷ Ex. 1 at 6.

received another application from the same post office on April 14, 2021 and that application bore a legible April postmark.

The Division denied the T's PFD applications as untimely.⁸ The denial decisions advised Ms. T of her informal appeal rights and stated that any appeal must be postmarked or received by the Division by October 24, 2021.⁹ Ms. T submitted informal appeals on all three applications denials, but each was signed and dated December 15, 2021.¹⁰ The applications arrived at the Division on December 22, 2021 in an envelope postmarked December 15, 2021 and included a postal money order dated December 7, 2021. On her informal appeal, Ms. T wrote "I never been out of state. I filed for 2021 PFD. This is my first time I'm doing this."¹¹ She made similar statements on the informal appeals for the children.¹²

The Division denied all three informal appeals because both the applications and the appeals were untimely.¹³

Ms. T timely submitted a formal appeal, but failed to fill out the portions of the application asking for the facts and arguments that support the appeal.¹⁴ A hearing was held on July 27, 2022. At the hearing, Ms. T testified that she did not remember mailing the PFD application, did not ask anyone else to mail them for her, and does not know how or when they came to be mailed to the Division.

III. Discussion

As the appellant, Ms. T has the burden of proving that she and her children are eligible for 2021 PFDs. Thus it was up to Ms. T to show that the informal appeals and the applications were timely or that the T's qualified for one of the very limited exceptions.

Ms. T failed to timely appeal. The informal appeals were due October 24, 2021. The Division provided that appeal deadline in its decisions. Ms. T, however, did not appeal until almost two months after this deadline. There is no question she did not apply until December — the appeals included a postal money order dated December 7, 2021, Ms. T dated the appeals December 15, 2021, the appeals were postmarked December 15, 2021, and the Division received

⁸ Ex. 2.

⁹ Ex. 2 at 1, 3, 5.

¹⁰ Ex. 3 at 1, 5, 7.

¹¹ Ex. 3 at 2.

¹² Ex. 3 at 6, 8.

¹³ Ex. 4.

¹⁴ Ex. 5.

the envelope on December 22, 2021. Ms. T offered no explanation for the untimely informal appeals, nor any evidence suggesting the appeals were timely.

Appeal deadlines may be waived to avoid an injustice.¹⁵ Waivers have been granted where there was some confusion about the deadline, but not where the appellant was busy or failed to file a change of address.¹⁶ Here, Ms. T offered no explanation at all for the late filed appeals, let alone an explanation that demonstrates an injustice absent a waiver.

Because the informal appeals were late, the Division correctly denied the appeals as untimely and this formal appeal should be dismissed for the same reason.

Even if not dismissed for failing to timely appeal, this appeal would be denied and the Division decisions affirmed because the applications themselves were also untimely. To be timely, an application must be received or postmarked by March 31, 2021.¹⁷ The T's applications arrived with an illegible postmark, but other evidence indicates the envelope was unlikely to have been postmarked by March 31. First, the Division did not receive the envelope until April 14, 2021 — two weeks after the deadline. Second, the same day the Division received the T's application, it received another application from the same post office and that envelope bore an April postmark. It stands to reason that envelopes received the same day originating from the same post office would have the same postmark. Third, when Ms. T mailed the informal appeals, the envelope had a December 15, 2021 postmark and was received by the Division on December 22, 2021, seven days later. If it takes approximately seven days for the Division to receive mail from Ms. T's rural post office, the PFD applications the Division received on April 14, 2021 were likely mailed around April 7, not late March. Ms. T offered no contrary evidence and could not recall how or when the applications were mailed. The evidence thus demonstrates that the applications were untimely.

Ms. T also failed to provide any evidence that she could qualify for an exception to the applications. There are limited exceptions for active duty military servicemembers, but Ms. T indicated on her application that she was not in the military.¹⁸ Minors reaching the age of majority and disabled persons can apply for a prior year PFD under specific circumstances, but

¹⁵ 15 AAC 05.030(k).

¹⁶ See *In re J. A. C., Jr.*, OAH Case No. 06-0742-PFD, at 4 (Commissioner of Revenue, 2006).

¹⁷ AS 43.23.011(a); 15 AAC 23.103(a).

¹⁸ AS 43.23.011(b), (c).

that was not the situation here.¹⁹ Ms. T offered no evidence that she or her children could qualify for a deadline exception for 2021. The PFD statutes and regulations do not give the Division discretion to waive the timeliness requirement or to consider other bases for an exception.

IV. Conclusion

The T's informal appeals were untimely. The Division correctly denied their informal appeals on this basis, and the Division's motion to dismiss is also granted for this same reason. But even if the appeal was not dismissed, the Division's decision would be affirmed because the T's PFD applications were also untimely.

This decision does not affect the T's ability to qualify in 2022 or subsequent years. Nor does this decision affect the rights of B.O and U.T to apply for a 2021 PFD when they turn 18.

Dated: July 29, 2022

Signed

Rebecca Kruse
Administrative Law Judge

¹⁹ 15 AAC 23.133.

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 22nd day of August, 2022.

By: Signed
Rebecca Kruse
Administrative Law Judge

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