

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

In the Matter of	)	
	)	
G. U.	)	
	)	OAH No. 22-0462-PFD
2021 Permanent Fund Dividend	)	
_____	)	

DECISION

I. Introduction

G. U.'s application for a 2021 Permanent Fund Dividend (PFD) was received by the Permanent Fund Dividend Division (Division) on August 31, 2021. The Division denied the application, both initially and at the informal appeal level, because it was filed after the March 31, 2021, deadline. Mr. U. requested a formal hearing, and the case was subsequently heard.

The Division's denial is affirmed because the application was filed late and did not qualify for any exception to the filing deadline. Under these facts, the law leaves no discretion to make an exception.

II. Facts

G. U. is a longtime Alaska resident and has successfully applied for and received PFDs annually since approximately 1998.¹ As such, he is familiar with the PFD filing requirements. He called the Division on, August 24, 2021, and spoke to a Division representative explaining that he had forgotten to file his 2021 PFD but still wanted to apply.² The representative explained that his application was late and that he did not appear to meet any of the exceptions that might allow a late filing. Mr. U. then said that he wished to appeal. He was told that without an application and a denial of the application, he could not appeal. He said he would come into the Division's Juneau office and pick-up a paper application so that he could apply for a PFD and potentially file an appeal.³

Mr. U.'s subsequent 2021 paper PFD application was dated, August 30, 2021, and received by the Division on August 31, 2021.⁴ However, his application was denied because it

Ex. 4, p. 3.

² G. U. Testimony; Ex. 2.

Ex. 2, p. 1.

Ex. 1.

was received after the March 31, 2021, deadline.⁵

Mr. U. timely filed a request for an informal appeal of the denial.⁶ In his informal appeal, he explained that he possesses significant health risks from COVID due to his advanced age (72) and obesity. Accordingly, he was unable to apply during the 2021 application period from January 1 through March 31, 2021.⁷

Because of Mr. U.'s reference to his advanced age and obesity as being a potential justification for his late filing, the Division sent him a 2021 application by disabled adult form and a licensed health care provider certification of disability form.⁸ Mr. U. then provided a complete 2021 Application by Disabled Adult form, his weight journal for January and February 2021, an incomplete certification of disability form, and an email from his former Doctor, C. T. with the Clinic A.⁹ However, the email from Dr. T. explained that he could not complete the disability certification form because he had not treated or seen Mr. U. since 2018.¹⁰ The Division then again requested a completed certification of disability form to verify that he met the definition of disability as contained in AS 43.23.295(2). Despite granting Mr. U. several extensions of time to provide the completed certification of disability form, he failed to do so.¹¹

In its informal appeal decision, the Division ultimately concluded that there was no evidence Mr. U. qualifies for an exception allowing him to file his application outside the application period.¹² He timely appealed that decision and requested a formal hearing.¹³ The hearing occurred on June 22, 2022. Mr. U. testified under oath. The Division participated through its investigator, Delilah Bernaldo, who also testified under oath.

III. Discussion

This case turns on the PFD application deadline requirement found in AS 43.23.011. As the statute provides, the period for applying for a dividend ends on March 31 of the dividend

⁵ Ex. 3. Per AS 43.23.011(a), the PFD application deadline is March 31 of the dividend year.

⁶ Ex. 4.

⁷ Ex. 4, p. 3.

Ex. 12.

⁹ Division Position Statement (June 7, 2022) at 2; Ex. 8.

¹⁰ Ex. 8, p. 9.

¹¹ Division Position Statement (June 7, 2022) at 2.

¹² Exs. 9, 10.

¹³ Ex. 11.

year.

In passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant must be a member of the armed services.¹⁴ Mr. U. acknowledged that he is not in the armed forces and so the March 31 deadline was absolute for him.¹⁵ Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled individuals to apply after the deadline.¹⁶

Based on what Mr. U. indicated in his informal appeal request, there was the potential that he might qualify for submission of a late-filed application based on having a disability. The applicable regulation is 15 AAC 23.133(d). It provides that:

[i]f an individual was disabled, as defined in AS 43.23.095, during the application period of the prior year and, as a result of the disability, did not timely file an application, that individual or an authorized representative may submit an application for the prior year dividend. ***A certification from a licensed health care provider must be provided with the disabled individual's application.*** The certification from a licensed health care provider must include

- (1) confirmation that the individual was disabled on March 31 of the dividend year for which the individual is applying; and
- (2) a statement explaining why the disability prevented the applicant from timely filing an application during the application period of the dividend year for which the individual is applying.¹⁷

Here, however, Mr. U. cannot be excused from the requirement to timely file his PFD. First, as he himself admitted, the reason his application was not timely submitted was because he forgot to do so.¹⁸ But the statutes and regulations that address filing for a PFD do not allow an applicant to submit a late application simply because they forgot to file on time. If that were the case, there would be no purpose in having a filing deadline at all.

Second, Mr. U. did not provide a completed certification of disability form, as required by 15 AAC 23.133(d).¹⁹ Without such a certification, Mr. U. is unable to avail himself of the disability exception to the requirement for timely filing an application.

¹⁴ AS 43.23.01 l(b), (c).

¹⁵ G. U. Testimony.

¹⁶ See AS 43.23.055(3), (7).

¹⁷ 15 AAC 23.133(d) (emphasis added).

¹⁸ G. U. Testimony; Ex. 2.

¹⁹ Division Position Statement (June 7, 2022) at 2; Ex. 8.

Third, even if Mr. U. had provided a disability certification, he still would have been unable to show that his alleged disability, being 72, obese, and at high-risk for COVID, made him unable to timely file his application. Demonstrating that his disability prevented him from timely filing is a further requirement to be granted an exception to the timely filing requirement.²⁰ As Mr. U. admitted during the hearing, he possessed both email and Internet access throughout the pandemic. He could have filed his application electronically, even if he deemed it necessary to self-isolate during the entirety of the application period from January 1 through March 31, 2021, due to his being at high-risk for COVID.²¹

For these reasons, Mr. U. certainly appeared eligible for a 2021 dividend, and it is a shame that he did not apply on time. However, the Department of Revenue is bound by the statutes promulgated by the Legislature and by its own regulations, which set a black-and-white filing deadline. The Department is not allowed to make exceptions because it sympathizes with people or because they are longtime Alaskans. Under the law, the Department of Revenue has no discretion in this matter, and it cannot grant Mr. U. a dividend.

IV. Conclusion

The Division's decision denying Mr. U.'s 2021 PFD application due to untimeliness is AFFIRMED.

DATED this 24th day of June 2022

SIGNED
Z. Kent Sullivan
Administrative Law Judge

²⁰ 15 AAC 23.133(d)(2).
²¹ G. U. Testimony.

Adoption

This Decision 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 15th day of July, 2022.

By: SIGNED
Z. Kent Sullivan
Administrative Law Judge

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