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

In the Matter of	)	
	)	
L. D. S.	)	OAH No. 23-0074-PFD
	)	

DECISION

I. Introduction

L. D. S.' application for a 2022 Permanent Fund Dividend (PFD) was received by the Permanent Fund Dividend Division (Division) on April 18, 2022. The Division denied the application, both initially and at the informal appeal level, because it was filed after the March 31, 2022, deadline. Mr. S. requested a formal hearing by correspondence. Based on the documentation and evidence presented, Mr. S.' 2022 PFD application was filed late, and he failed to establish that he qualified for any of the exceptions to the filing deadline.' Under these facts, the law leaves no discretion to make an exception. Accordingly, the Division's denial of Mr. S.' 2022 PFD application is affirmed.

II. Facts

Mr. S. is a longtime rural Alaska resident and has successfully applied for and received PFDs in the past.[1] As such, he is familiar with the PFD filing requirements. On April 18, 2022, the Division received a paper application from Mr. S., dated March 28, 2022, in an envelope postmarked April 11, 2022.[2]

Mr. S.' application was denied because it was received after the March 31, 2021, deadline.[3] He timely filed a request for an informal appeal of the denial.[4] In his informal appeal, he indicated that there was nothing in the denial letter that was incorrect. He also simply answered "None" to the questions asking if there are other relevant facts the Division should have considered and whether there are any other additional considerations.[5]

The Division next sent Mr. S. correspondence asking that he verify whether he might qualify for an exemption from the timely filing requirement and if so, to provide that proof. Specifically, as the Division explained, such proof might consist of either confirmation

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1 Ex. 1, pp. 1, 3.
2 Ex. 1.
3 Ex. 2. Per AS 43.23.011(a), the PFD application deadline is March 31 of the dividend year.
4 Ex. 3.
5 Ex. 3, p. 2.

of a disability that would have prevented his timely filings, or alternatively an official statement from the United States Postal Service (USPS), on USPS letterhead, describing the specific circumstances that caused a delay in posting Mr. S.' 2022 PFD application.[6]

Mr. S. subsequently provided a handwritten note indicating as follows: "2022 PFD Delayed application threw the United States Postel Service for L. D. S.,"[7] The note was not on official USPS letterhead. It was dated, appears to have been signed by two separate individuals, and contains a postmark stamp from the Postmaster in Mr. S.' home community.[8] In its informal appeal decision, the Division again denied the application indicating that Mr. S. had failed to prove that his application was received before the deadline or that he qualified for any of the exceptions to timely filing.[9]

Mr. S. subsequently requested a formal hearing by written correspondence. In his request, he indicated that "I am still eligible cause I am Alaskan native and I still live in Alaska my application was received late."[10] No other information was provided by Mr. S. and the deadline to do so expired on March 13, 2023.[11]

III. Discussion

This case hinges 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 year.

In passing the statute, the legislature provided only two explicit exceptions. To be eligible for either of them, the applicant must be a member of the armed services.[12] Mr. S. indicated on his application that he was not in the armed forces or U.S. Coast Guard.[13] As such, the provisions that sometimes allow military service members exemptions from the timely filing requirement were inapplicable to Mr. S..

Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled individuals to apply after the deadline.[14] Despite being provided the necessary certification of disability form to claim that a disability caused the late filing of his application,

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6 Ex. 4.
7 Ex. 5 (errors in the original).
8 Ex. 5.
9 Ex. 6.
10 Ex. 7 (errors in the original),
11 Notice of Hearing by Correspondence (January 27, 2023).
12 AS 43.23.01 l(b), (c).
13 Ex. 1, p. 1.
14 *See* AS 43.23.055(3), (7).

Mr. S. did not rely on this provision or complete the form.[15] Without such a certification, Mr. S. is unable to avail himself of the disability exception to the requirement for timely filing an application.

The final manner that Mr. S. could be excused from the timely filing requirement and the provision that he appears to rely on in this instance is 15 AAC 23.103(g). That regulation specifically provides that:

> It is an individual's responsibility to ensure that an application is timely delivered to the department. 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.**[16]

Here, although Mr. S. did provide a hand-written note purporting to suggest that his failure to timely file his PFD application might have been due to an error by the USPS, unfortunately, that hand-written letter falls short of what is required by 15 AAC 23.103(g). It is not on official USPS letterhead and based on the information it contains, the Division is unable to verify who specifically wrote the letter and if they are employees of the USPS. As the individual challenging the Division's decision, Mr. S. bears the burden of proof in this matter, and the hand-written note he provided fails to satisfy that burden.[17]

The Department of Revenue 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. S. a dividend.

IV. Conclusion

The Division's decision denying Mr. S.' 2022 PFD application due to untimeliness is AFFIRMED.

DATED this 31st day of March 2023

SIGNED

Z. Kent Sullivan
Administrative Law Judge

15 Ex. 4, pp. 3-5.
16 15 AAC 23.103(g) (emphasis added).
17 15 AAC 05.030(h)

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 25th day of April 2023.

SIGNED

Lawrence A Pederson

Administrative Law Judge/OAH

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