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

In the Matter of	)	
	)	
Q. G. & S. G. JR.	)	OAH No. 20-0082-PFD
	)	

DECISION

I. Introduction

Q. G. & her adult son S. G. Jr. appeal the denial of their 2019 Permanent Fund Dividend (PFD) Applications. The PFD Division (Division) denied the applications because they were received after the filing deadline.

Based on the evidence in the record, and controlling law, the Division's decision to deny the applications is Affirmed.

II. Facts[1]

Q. G. and her son, S. Jr., live in City A. They are lifelong Alaskans with a lengthy history of PFD receipt.[2] Ms. G. prepared and signed her Adult application on January 28, 2019.[3] Mr. G. completed a written Adult PFD application and gave it to his mother for posting with the family mail on her next trip to the post office. His Adult application was signed January 29, 2019.[4]

Ms. G.'s trip to the post office was delayed due to personal demands. She put the PFD applications to the side to take care of in the future. Ms. G. needed to travel to Anchorage the end of March 2019. She took a pile of uncompleted tasks and paperwork to do on the plane. She discovered the previously signed PFD applications in that paperwork.

When Ms. G. arrived in Anchorage she immediately found an envelope, addressed it, and mailed the envelope to the Division from an Anchorage post office. She addressed the envelope to: Address A.[5] She could not remember exactly where

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1 The following facts were established by a preponderance of the evidence at the hearing.
2 Ex. 1, pp. 5 and 10.
3 Ex. 1, p. 4.
4 Ex. 1, p. 9.
5 Ex. 1., p. 11.

she found that address, but believed it to be one listed on PFD paperwork or the website.

The PFD applications were mailed on April 2, 2019 according to the U.S. Postal Service meter marking.[6] However, the address Ms. G. used is not the mailing address for PFD applications. That address is P.O. Box, 110462, Juneau, Alaska 99811. Therefore, the letter containing the applications was returned to Ms. G..[7]

Ms. G. re-mailed the applications to the correct PFD address.[8] They were received by the Division on May 6, 2019.[9] The Division denied both Ms. G. and Mr. G.'s applications as untimely since they had not been mailed on or before the statutory deadline of March 31, 2019.[10]

The G.'s requested an informal appeal on August 16, 2019.[11] The decision to deny their applications was upheld at the agency level on December 23, 2019.[12]

A Notice of Formal Appeal was filed on January 14, 2020.[13] The hearing was held March 6, 2020. PFD Specialist Peter Scott appeared on behalf of the Division. Ms. G. appeared on behalf of herself and her son. Mr. G. made a statement requesting the Division's decision be reversed.

III. Discussion

The legislature has adopted a strict deadline for PFD applications. A PFD application must be received or postmarked on or before March 31rst of the application year.[14] The applicant is responsible for ensuring that the application is timely delivered to the Division.[15] A person who files the application after the deadline is not eligible to receive a PFD.[16]

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6 Ex. 2, p. 2. *See* 15 AAC 23.993(a) (24) (defining "post-marked").
7 Ex. 2, p. 2.
8 Ex. 1, p. 11.
9 *Id.*
10 Ex. 3.
11 Ex. 4.
12 Ex. 5.
13 Ex. 6.
14 AS 43.23.011(a); 15 AAC 23.103(g).
15 15 AAC 23.103(g).
16 AS 43.23.005(a)(1).

There are only two exceptions to the filing deadline. They are for active duty military personnel who are eligible for hostile fire or imminent danger pay,[17] or for persons who are prevented from timely filing by a physical or mental disability.[18] Ms. G. and her son do not qualify for either of those exceptions.

There is no ambiguity in the statute or the regulation; pursuant to AS 43.23.005 a person who fails to file on time is not eligible for the dividend unless she can prove the failure is excused due to the limited circumstances set out in AS 43.23.011(b) (the military justification) or 15 AAC 23.133(d) (the disability justification).[19] The Division and the Commissioner must follow the statutes and regulations as written.

Ms. and Mr. G. request their applications nevertheless be accepted because they made a good faith attempt to comply with the law, and they need the PFD funds to heat and maintain their home. They signed the applications long before the filing deadline expired and only inadvertently failed to get them to the correct address on time. This would be a stronger argument had the original mailing been posted on or before March 31, 2019 as required. In that case, if the address was a valid one for the Division, even if not the one primarily designated for applications, the G.'s might have a basis to assert their applications complied with 15 AAC 23.993(a) and (g) which require the applications be "received by the department or postmarked during the application period" but do not specify an address.

However, the original mailing was not submitted on time as required. The original mailing by Ms. G. after she arrived in Anchorage occurred on April 2, 2019. The applications were mailed and postmarked after the deadline. Thus, while the result is unfortunate, the G.s did not establish an exception to the filing requirement deadline.

Therefore, the applications Ms. G. filed for her own and her adult son's 2019 PFD were not timely. She and Mr. G. are thus not entitled to the dividend. The PFD Division correctly applied the law when it denied the applications.

IV. Conclusion

Q. G. and S. G. Jr. did not timely file their 2019 PFD applications. The Division's denial is Affirmed.

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17 AS 43,23,011(b).
18 15 AAC 23.133(d).
19 *E.g. Alaska Public Employees v. Fairbanks*, 753 P.2d 725, 726 n. 5 (Alaska 1988).

Dated: March 17, 2020

SIGNED
Carmen E. Clark
Administrative Law Judge

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 14th day of April, 2020.

By: SIGNED
Signature
Carmen E. Clark
Name
Admin. Law Judge
Title

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