

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

In the Matter of)	
)	
T. E. M.)	OAH No. 07-0421-PFD
)	Agency No. 066275052
<u>2006 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

T. E. M. applied for a 2006 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application initially and at the informal appeal level. Mr. M. requested a hearing, which was held on August 17, 2007. He appeared by telephone; Susan R. Pollard represented the division. Kay L. Howard, Administrative Law Judge, Office of Administrative Hearings (OAH), conducted the hearing.

Based upon a review of the entire record in this case and after due deliberation, the PFD Division's denial of Mr. M.'s application for a 2006 Permanent Fund dividend is affirmed.

II. Material Facts

Mr. M. lives in Kenai, Alaska. On March 31, 2006, he completed and signed his application for a 2006 PFD and went to the Kenai post office at about 3:50 p.m. to purchase an envelope and mail the application by first class mail.¹ He did not ask the post office employee to postmark the envelope, nor did he obtain a mailing receipt for it.

When Mr. M.'s application arrived at the Division's offices, the postmark on the envelope read April 1, 2006.² Apparently it had not been postmarked in Kenai, but first went to Anchorage, where it was postmarked before being sent to Juneau by the U. S. Postal Service. The Division denied the application as untimely and Mr. M. filed an appeal with the OAH.

III. Discussion

In order to qualify for a PFD, an applicant must file a timely application.³ The application period runs from January 2nd through March 31st of the applicable year.⁴ "It is an individual's responsibility to ensure that an application is timely delivered to the department."⁵

¹ The facts are taken from Mr. M.'s testimony, unless otherwise stated.

² Exh. 1 at pg. 3.

³ AS 43.23.005(a)(1).

⁴ AS 43.23.011(a).

⁵ 15 AAC 23.103(g).

To supplement these laws, the Department of Revenue, of which the PFD Division is a part, has adopted the following regulation:

If an individual has timely filed an application but the department does not have that application on file, the individual may submit a request to reapply on or before December 31 of the dividend year. A request to reapply must be accompanied by one of the following forms of evidence that an application was timely filed with the department:

(1) a mailing receipt;

(2) a mailing return receipt documenting delivery to the department or other evidence of receipt by the department; or

* * * * *

(4) a copy of the computer generated confirmation page containing the confirmation number received by the applicant after completing the online filing process.^[6]

Prior to 2006, there was a provision in 15 AAC 23.103(h)(3) that allowed someone who had applied by mail to show other kinds of evidence, such as an affidavit, that he or she had actually mailed the PFD application during the application period. That provision was repealed on January 1, 2006, and is no longer in effect.

Administrative agencies do have some discretion to interpret their regulations within a reasonable range.⁷ On September 17, 2007, the Commissioner of Revenue interpreted 15 AAC 23.103(h) to allow for “contemporaneous written documentation of mailing by an unrelated third party as being substantially equivalent to a mailing receipt.”⁸ Thus, the department’s regulations currently mandate that applicants who use the Postal Service may remedy a lost application only if they possess a Postal Service mailing receipt, return receipt or “a substantial equivalent to a mailing receipt.” Mr. M. does not possess a mailing receipt or a substantial equivalent for the application he mailed on March 31, 2006.

Without a mailing receipt, the only way Mr. M. can obtain a 2006 PFD is to qualify for an exception. The only exceptions allowed for filing outside the statutory application period are

⁶ 15 AAC 23.103(h).

⁷ See, e.g., *Rose v. Commercial Fisheries Entry Comm.*, 647 P.2d 154, 161 (Alaska 1982) (agency given some leeway to interpret regulation to fit its intent in promulgating the rule and/or in the formulation of fundamental policy).

⁸ *In the Matter of B.*, OAH Case No 07-0380-PFD, Agency No. 06630352-8, decided by the Commissioner on September 17, 2007.

for certain military members⁹ and for individuals who met the regulatory definition of “disabled” during the application period and whose disability prevented them from timely filing an application.¹⁰ Mr. M. was not a member of the armed forces during the application period,¹¹ nor is there any evidence that he was disabled as defined in AS 43.23.095(2) during the application period for the 2006 PFD. He states in his appeal that “I am disabled living on an income far below the poverty level and am greatly in need of the money[,]”¹² but the statement was an indication of Mr. M.’s financial circumstances rather than an assertion he was disabled and could not complete an application.¹³ Thus the two exceptions do not apply here.

Mr. M. argues:

I am eligible because I am a resident of the state of Alaska and I do meet all the requirements for a resident to receive a PFD. My application was mailed on time on March 31, 2006. I shouldn’t be penalized for any mishandling or whatever was the case of my application by the post office and its employees after I mailed it. For my application to be postmarked in Anchorage 01 April 06 the Kenai post office would of had to have it in their possession before 4:30 pm on March 31, 2006.^[14]

Mr. M. may, in fact, meet all of the residency requirements for a PFD. However, a person must not only meet eligibility criteria, he or she also must file a timely application in order to receive a PFD. Mr. M.’s envelope was postmarked on April 1, 2006, so without evidence proving it was mailed on March 31, 2006, his application was untimely. His assertion that the application would have had to have been received by the Kenai post office before 4:30 p.m. on March 31, 2006, in order to be postmarked in Anchorage by 1:00 p.m. on April 1, 2006, is sounds perfectly logical. Unfortunately, there is no evidence in the record, such as an affidavit or testimony from a postal service employee that could verify Mr. M.’s claim. Without that evidence, his appeal must fail.

The law provides only very limited exceptions to the requirement for timely filing a PFD application, and those exceptions do not apply to Mr. M.. Even though his testimony was

⁹ AS 43.23.011(b), (c).

¹⁰ AS 43.23.095(2).

¹¹ Exh. 1 at pg. 1.

¹² Exh. 3 at pg. 2.

¹³ AS 43.23.095(2) defines disabled as “physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause; “disabled” does not mean “incompetent”[.]

¹⁴ Exh. 3 at pg. 2.

credible and there is no reason to doubt his veracity, the Department of Revenue and the administrative law judge are bound by the department's regulations.

IV. Conclusion

Mr. M. not provide a mailing receipt showing timely mailing of his 2006 PFD application during the January 2nd – March 31st application period, nor do any of the exceptions apply to him. Therefore, his application for the 2006 PFD is untimely and he is thus not entitled to the dividend that year. The PFD division correctly applied the law when it denied his application for a 2006 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of T. E. M. for a 2006 Permanent Fund dividend is AFFIRMED. This decision does not affect his status as a resident or his eligibility for 2007 and future dividends.

DATED this 21st day of December 2007.

By: Signed
Kay L. Howard
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 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 AS 25.27.210 and Alaska Rule of Appellate Procedure 601(a)(2) within 30 days after the date of this decision.

DATED this 18th day of January, 2008.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]