

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

In the Matter of: )  
 )  
D. V. V. )  
 ) OAH No. 07-0476-PFD  
 ) Agency No. 066302068  
2006 Permanent Fund Dividend )

**DECISION AND ORDER**

**I. Introduction**

The application of D. V. V. for a 2006 permanent fund dividend (“PFD”) was initially denied at the informal appeal level by the Permanent Fund Dividend Division (“Division”) because it believed Ms. V. V. failed to timely file her 2006 PFD application. At Ms. V. V.’s request, this office held a formal hearing on September 17, 2007. Ms. V. V. appeared in person. As a result of an inadvertent mistake by the Administrative Law Judge, the Division did not participate. The hearing was recorded. Exhibits 1-6 were admitted.

An order setting a supplemental hearing was issued October 4, 2007. On October 15, 2007, the Division filed its supplemental hearing brief with the affidavits of Anvalara Pearce and Susan Pollard. A supplemental hearing was held on October 17, 2007. Ms. V. V. attended in person. Ms. Pollard and Ms. Pearce testified telephonically from Juneau on behalf of the Division. The record was closed October 26, 2007.

**II. Facts**

Ms. V. V. has resided in Alaska since 1978 and has received every dividend since the PFD program’s inception. Ms. V. V. testified that she mailed her application and the application of her household member, M. A., for a 2006 PFD in January 2006 by first class mail, in a single envelope, and that she did not request a mailing receipt. The Division received Mr. A.’ application on January 12, 2006; he received his 2006 PFD in due course.<sup>1</sup>

Ms. V. V. expected that she would receive her 2006 PFD by direct deposit to her bank account. When she did not receive the PFD as expected, she inquired online and found no record of her 2006 application. She proceeded to the Division office in Anchorage on October 24, 2006,

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<sup>1</sup> Exhibit 3, p. 4.

filled out and filed another application for the 2006 PFD.<sup>2</sup> On November 15, 2006, the Division gave written notice that Ms. V. V. did not qualify for the dividend because her application was untimely.<sup>3</sup>

Ms. V. V. initiated an informal appeal<sup>4</sup> which was denied by the Division (dividend appeals unit) on June 29, 2007.<sup>5</sup> On or about July 8, 2007, Ms. V. V. timely filed her request for a formal hearing.<sup>6</sup> Ms. V. V. credibly and adamantly argues that she filed her 2006 PFD application in January 2006 and that if the Division has no record of its receipt, that the omission or error is not hers. She states that she and Mr. A. timely filed in 2006, in exactly the same manner as they have done since the early 1990's. Ms. V. V. is not a member of the armed forces and was not disabled at any relevant time.

### **III. Discussion**

A person must file an application to qualify for a permanent fund dividend.<sup>7</sup> Applications for the 2006 PFD must be filed during the period of January 2 through March 31.<sup>8</sup> Under the applicable law, the only exceptions to the filing deadline are for certain disabled people when their disability prevents timely filing, for certain children when their parents or guardians do not timely apply on their behalf, and for certain military members who were eligible for imminent danger or hostile fire pay during the application period.<sup>9</sup> At a formal hearing, the person requesting the hearing has the burden of proving that the Division's action was in error.<sup>10</sup>

The regulation, 15 AAC 23.103, which controls and applies to Ms. V. V.'s case provides in pertinent part:

(g) 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

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3, pp. 1,2.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 5.

<sup>7</sup> AS 43.23.005(a)(1).

<sup>8</sup> AS 43.23.011.

<sup>9</sup> *Id.*; 15 AAC 23.133.

<sup>10</sup> 15 AAC 05.030(h).

United States Postal Service or a foreign postal service that describes the specific circumstances under which it incorrectly posted the individual's application or caused a delay in posting....

(h) 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;<sup>11</sup>
- (2) a mailing return receipt documenting delivery to the department or other evidence of receipt by the department; or
- (3) a copy of the computer generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process.

It is undisputed that the Division received Mr. A.'s 2006 PFD application on January 12, 2006.<sup>12</sup> Ms. V. V.'s testimony is that both her 2006 PFD application and Mr. A.'s 2006 application were remitted together in one envelope as they had done as house members each and every year since the early 1990's. The Division does not dispute that Ms. V. V. and Mr. A. have filed their applications together and on the same day from 1993 through 2005.<sup>13</sup> The testimony and briefing submitted in this case gave rise to the question of how does the Division know that Mr. A.'s 2006 PFD application was the only application in the envelope containing Mr. A.'s application?

I find no reason to doubt the truthfulness and veracity of Ms. V. V. Even though she has not provided a mailing receipt or a mailing return receipt as required, an acceptable equivalent document<sup>14</sup> is allowed by law to buttress her argument that her application arrived in Juneau with the application of Mr. A.. I find that the original envelope undisputedly containing Mr. McGill's application is the substantial equivalent to a mailing receipt for the missing application of Ms. V. V.. With this finding, the only remaining issue is whether or not Ms. V. V.'s application was in the envelope. Based upon all of the evidence in the record, the demeanor, credibility, the undisputed consistency of how Ms. V. V. filed her applications over the years,

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<sup>11</sup> 15 AAC 23.103(h)(1) has been interpreted to allow the consideration of "contemporaneous written documentation of mailing by an unrelated third party"; such documentation can be treated as the equivalent of a "mailing receipt". OAH Case No. 07-0380-PFD, *Sebastian F. Black, Zabein M. Black, and Torrin L. Black*, a September 17, 2007 decision by the Director of Administrative Services.

<sup>12</sup> Exhibit 6.

<sup>13</sup> Exhibit 6, p. 3.

<sup>14</sup> *See* fn. 11.

plus the precise testimony of Ms. V. V., I find that her application was sent to, and received in, Juneau in the same envelope as that of Mr. A.<sup>15</sup> Therefore, she can reapply for a 2006 PFD because her 2006 application was mailed and received by the Division before the end of the application period. The Division incorrectly denied her application.

This decision should not be construed as a criticism of the Division.<sup>16</sup> The testimony of Ms. Pollard and Ms. Pearce, their affidavits and the Division's briefing in terms of the facts asserted are not deemed to be in error. The Division's belief that it is "unlikely that Ms. V. V.'s application was missed" is accepted as a statement made in good faith.<sup>17</sup> Even though it is undisputed that the Division does not have a record of receiving Ms. V. V.'s 2006 application, the totality of the evidence and circumstances support a finding that her application was received by the Division at the same time as Mr. A.'s application was received.<sup>18</sup>

#### **IV. Conclusion**

Ms. V. V. met her burden of proving by a preponderance of the evidence that the Division's denial of her 2006 application was incorrect. Thus, Ms. V. V. is entitled to a 2006 PFD.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of D. V. V. for the 2006 permanent fund dividend is REVERSED.

DATED this 2nd day of April, 2008.

By: Signed \_\_\_\_\_  
James T. Stanley  
Administrative Law Judge

**Adoption**

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<sup>15</sup> Credibility "involves more than demeanor. It apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with the other evidence." *Carbo v. United States*, 314 F.2d 718, 749 (9<sup>th</sup> Cir. 1963).

<sup>16</sup> The Division received 623,285 applications in 2006. Of the applicants 57% filed online meaning that more than 268,000 applications were paper filings. P. 8, *Permanent Fund Division 2006 Annual Report*.

<sup>17</sup> P.1, numbered para. 3, supplemental information brief filed by the Division on October 15, 2007.

<sup>18</sup> It must be remember that at the time the Division denied Ms. V. V.'s 2006 application, the relaxation of the mailing receipt requirement had not occurred. The Director of PFD Administrative Services first allowed the substantial equivalent of a mailing receipt on September 17, 2007. *See* fn. 12 above.

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29<sup>th</sup> day of April, 2008.

By: Signed  
Signature  
James T. Stanley  
Name  
Administrative Law Judge  
Title

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