

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

In the Matter of	)	
	)	
M., D., R. & K.	)	
N.	)	OAH No. 07-0488-PFD
	)	Agency No. 066302319
<u>2006 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

M., D., R. and K. N. applied for 2006 permanent fund dividends (PFD). The Permanent Fund Dividend Division (Division) determined that the applications were untimely and denied them initially and at the informal appeal level. The N.s requested a hearing, which was held on September 20, 2007. M. N. appeared by telephone on behalf of herself and her family members; Susan R. Pollard represented the division. Kay L. Howard, Administrative Law Judge, Office of Administrative Hearings, conducted the hearing.

Based upon a review of the entire record in this case and after due deliberation, the PFD Division's denials of the N.s' applications for a 2006 permanent fund dividend are affirmed.

**II. Material Facts**

M. and D. N. are the parents of R. and K. N. The N.s prepared their PFD applications in February 2006.<sup>1</sup> R. was going out on a boat, so M. had him sign his application before he left. On February 11, 2006, M. put all four applications in one envelope, attached two stamps and took it to the post office. She asked the postmaster to weigh the envelope and confirm it had enough postage before she put it in the mail. M. did not obtain a receipt for the envelope.

At dividend time, the N.s did not receive their PFDs through direct deposits, as expected, so M. contacted the Division and learned their applications had not been received. Subsequently the family members submitted written applications that were received by the Division on October 30, 2006.<sup>2</sup>

**III. Discussion**

In order to qualify for a PFD, an applicant must file a timely application.<sup>3</sup> The application period runs from January 2<sup>nd</sup> through March 31<sup>st</sup> of the applicable year.<sup>4</sup> To

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<sup>1</sup> The facts are taken from Ms. N.'s testimony, unless otherwise stated.

<sup>2</sup> Exh. 3 at pgs. 1, 3, 5 & 7.

<sup>3</sup> AS 43.23.005(a)(1).

supplement these laws, the Department of Revenue, of which the PFD Division is a part, has adopted the following regulation:<sup>5</sup>

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

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

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.<sup>6</sup> 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.”<sup>7</sup> 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

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<sup>4</sup> AS 43.23.011(a).

<sup>5</sup> 15 AAC 23.103(h).

<sup>6</sup> 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).

<sup>7</sup> *In the Matter of B.*, OAH Case No 07-0380-PFD, Agency No. 06630352-8, decided by the Commissioner on September 17, 2007.

mailing receipt.” The N.s do not possess a mailing receipt or a substantial equivalent for the applications M. mailed on February 11, 2006.<sup>8</sup>

Without a mailing receipt, the only way the N.s can obtain a 2006 PFD is to qualify for an exception.<sup>9</sup> The only exceptions allowed for filing outside the statutory application period are for certain military members<sup>10</sup> and for individuals who met the regulatory definition of “disabled” during the application period and whose disability prevented them from timely filing an application.<sup>11</sup> None of the family members was a member of the armed forces during the application period,<sup>12</sup> nor is there any evidence that they were disabled as defined in AS 43.23.095(2) during the application period for the 2006 PFD.

M. argued at the hearing that they were born and raised in Alaska, they have applied for the PFD every year since its inception, and as such, they should be entitled to the dividend. This is not correct. A person must not only meet residency criteria, but he or she must also file a timely application in order to receive a Permanent Fund dividend. “It is an individual’s responsibility to ensure that an application is timely delivered to the department.”<sup>13</sup>

The law provides only very limited exceptions to the requirement for timely filing a PFD application, and those exceptions do not apply to the N.s. Even though M.’s testimony was credible and there is no reason to doubt her veracity, the Department of Revenue and the administrative law judge are bound by the department’s regulations.

#### **IV. Conclusion**

The N.s did not provide a mailing receipt showing timely mailing of their 2006 PFD applications during the January 2<sup>nd</sup> – March 31<sup>st</sup> application period, nor do any of the exceptions apply to them. Therefore, their applications for the 2006 PFD are untimely and they are thus not entitled to the dividend that year. The PFD division correctly applied the law when it denied their applications for a 2006 permanent fund dividend. This decision does not affect their status as residents or their eligibility for 2007 and future dividends. Also, as stated above, this decision

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<sup>8</sup> In their informal appeals, all of the family members wrote that their applications were mailed on February 24, 2006. *See* Exh. 3 at pgs. 2, 4, 6 & 8. M. testified at the hearing that date was a mistake and that February 11, 2006, is the date she mailed the applications.

<sup>9</sup> K. may apply for a 2006 dividend upon reaching majority or upon emancipation, but prior to her 19<sup>th</sup> birthday, as provided by 15 AAC 23.133(b) and (c). She only has a one-year window to apply, so M. should keep a copy of this decision so K. can attach it to her application at that time.

<sup>10</sup> AS 43.23.011(b), (c).

<sup>11</sup> AS 43.23.095(2).

<sup>12</sup> Exh. 1 at pg. 1.

<sup>13</sup> 15 AAC 23.103(g).

does not preclude K. from applying for a 2006 dividend upon reaching majority or upon emancipation, but prior to her 19<sup>th</sup> birthday, as provided by 15 AAC 23.133(b) and (c).

**V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of M., D., R. and K. N. for 2006 permanent fund dividends is AFFIRMED. This decision does not affect their status as residents or their eligibility for 2007 and future dividends.

DATED this 12<sup>th</sup> 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 8th 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.]