

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

In the Matter of:

B. T.

2006 Alaska Permanent Fund dividend

OAH No. 07-0498-PFD

DOR No. 07413197-3

DECISION and ORDER

I. Introduction

B.T. did not receive a 2006 Alaska Permanent Fund dividend because the Permanent Fund Division does not have a timely application for him on file. Mr. T. submitted a request to reapply, which was denied. Mr. T. filed an appeal and the case was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a hearing on October 3, 2007. Mr. T. and other witnesses testified on his behalf. Kimberly Colby represented the division.

Because the preponderance of the evidence establishes that Mr. T. submitted a timely application, and his request to reapply is accompanied by the required evidence, the division's decision is reversed.

II. Facts

B.T. is an Alaska resident who is eligible for a 2006 dividend if he has met the applicable filing requirements.

Mr. T. was born on December 1, 1987; he turned 18 on December 1, 2005 and in 2006, for the first time, he was eligible to file his own application for a dividend. Mr. T. lives in Ester, Alaska, along with his mother, stepfather, two sisters, and his older sister's two children. In late January or early February, 2006, the T. family gathered around a kitchen table at the family home to complete their 2006 dividend applications.

Mr. T. filled out his own application, and his mother filled out applications for the minor children. Applications for all seven family members, including Mr. T., were placed into an envelope and mailed to the Permanent Fund Division. The envelope was timely postmarked and was received by the division on February 10, 2006.

The division recorded the receipt of applications for all the family members except for B.T. and it paid dividends to all of the family members except for him. The division does not have a timely application for B.T. in its files.

Mr. T. filed a timely request to reapply.¹ The division denied the request for reapplication, and Mr. T. filed this appeal.

III. Discussion

Generally, to receive an Alaska Permanent Fund dividend, an eligible individual must file an application no later than March 31 of the dividend year. The individual must apply using the application form provided by the division, which, to be considered timely, must be received or postmarked no later than the filing deadline.³

If an individual timely files an application, but the division does not have the application on file, the individual may submit a request to reapply.⁴ A request to reapply must be accompanied by one or more specified types of evidence that an application was timely filed. For mailed filings, the request to reapply must be accompanied by a mailing receipt or evidence of receipt by the department.⁵

The referenced regulations, read together, provide for payment of a dividend to eligible applicants when (1) the applicant submitted a timely application and (2) either (a) the division has a timely application on file; or (b) the division does not have a timely application on file, but a timely reapplication is filed, accompanied by the required evidence of timely filing.

Both Mr. T. and his sister provided credible testimony that his application was timely filed by mail in the same envelope as the other family members' applications, and the division offered no testimony or evidence to rebut their testimony. There is nothing in the record to suggest that the human error could not have resulted in the loss of Mr. T.'s application after receipt by the division, and thus the preponderance of the evidence is that his application was timely mailed to the division in the same envelope as the other family members' applications. He has therefore satisfied the threshold requirement for a request to reapply: prior

¹ Ex. 1. The request came in the form of an untimely application.

² AS 43.23.005(a)(1); -.011(a). Certain individuals on active duty in the armed forces may apply at a later date. See AS 43.23.011(c).

³ 15 A A C 23.103(a).

⁴ 15 A A C 23.103(h).

⁵ 15 A A C 23.103(h)(1), (2).

submission of a timely application. In addition, it is undisputed that he submitted a timely request to reapply. The remaining issue to be decided is a legal question: is Mr. T.'s request to reapply "accompanied" by a "mailing receipt," within the meaning of 15 AAC 23.103(h)(1).⁶

The term "mailing receipt" in 15 AAC 23.103(h)(1) should be read in accordance with its common usage. In common usage, a "mailing receipt" is "a writing acknowledging the receipt of goods or money."⁸ A postmark is a writing acknowledging the receipt of the postmarked envelope at the time and location stated in the postmark. A timely-postmarked is thus a mailing receipt within the meaning of 15 AAC 23.103(h)(1): it evidences the timely mailing of all applications contained in the envelope.⁹ The division does not deny that it received a timely-postmarked envelope containing the other family members' applications, and the preponderance of the evidence is that the envelope contained Mr. T.'s application as well. Thus, the central legal issue raised in this case is whether a request to reapply may be said to be "accompanied" by a timely-postmarked envelope previously received by the division.¹⁰

15 AAC 23.103(h)(1) could be construed to mean that a request to reapply is "accompanied" by a timely postmarked envelope when the division has previously received such

⁶ 15 AAC 23.103(h) states:

(h) If an applicant 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
- (3) [repealed]
- (4) a copy of the computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process.

⁷ AS 01.10.040(a); OAH No. 07-0141-PFD (2007) at 4, note 8.

⁸ OAH No. 07-0141-PFD (2007), *citing* WEBSTER'S COLLEGIATE DICTIONARY at 1038 (11th Ed. 2003).

⁹ Nothing in the division's regulations suggests that a request to reapply must be accompanied by a mailing receipt unique to an individual application. Indeed, the only way that such a requirement could be enforced would be by prohibiting mailing multiple applications in a single envelope, since, as has previously been observed, a mailing receipt does not necessary confirm the contents of the item mailed. *See* OAH No. 07-0380-PFD, at 3, note 9 (2007).

In this respect, 15 AAC 23.103(h)(1) is notably different from 15 AAC 23.103(h)(4), which applies to electronic applications filed on line. That regulation requires that a request to reapply must be accompanied by a confirmation page that contains the confirmation number received by the applicant. Because each online application receives a unique identifying number, the evidence of filing is similarly unique. *See* OAH No. 07-0425-PFD (2007).

¹⁰ This situation can occur only when the required evidence is a timely-postmarked envelope: applications. The postal mailing receipts are sent to the sender (not the addressee), and if the division has an electronic confirmation number for an eligible applicant, the dividend is paid to that applicant.

an envelope. To "accompany" means "to be in association with."¹¹ A document may be said to "accompany" a request to reapply when the document is incorporated by reference. Read in this manner, it is reasonable to construe 15 A AC 23.103(h)(1) to mean that a request to reapply may be "accompanied" by a timely postmarked envelope previously in the division's possession.

But 15 A AC 23.103(h)(1) need not be so construed. Typically, a receipt is obtained by the individual on whose behalf the receipt is prepared, either at the time of the underlying event or at some later time. For example, a mailing receipt is generally obtained at the time of mailing, in the form of a certificate of mailing or certified mail receipt, although a mailing receipt in the form of an affidavit or other official statement by a postal service official may be obtained at a later date.¹² The requirement that a request to reapply must be "accompanied" by a mailing receipt could be construed, in light of that common practice, as a requirement that the applicant must have independently obtained and submitted a mailing receipt, and may not rely on the original postmarked envelope.

The courts will generally defer to an administrative agency's reasonable interpretation of its own regulations, in order to effectuate the agency's intent.¹³ In this case, the commissioner has not previously decided whether a request to reapply may be "accompanied" by the original postmarked envelope. The common meaning of the term "mailing receipt" includes a postmark, but it would not be unreasonable to construe 15 A AC 23.103(h)(1) to mean that a request to reapply must be "accompanied" by an independently obtained mailing receipt. The commissioner has discretion to interpret the regulation in that manner. For purposes of this decision, however, the administrative law judge reads the regulation as permitting a request to reapply to be supported by the original postmarked envelope, in accordance with the common meaning of the terms "mailing receipt" and "accompanied."

IV. Conclusion

B.T.'s application was timely filed, but for unknown reasons the division does not have a record of timely filing. Mr. T.'s request to reapply is "accompanied" by a

¹¹ Webster's Ninth New Collegiate Dictionary at 49 (1990).

¹² See, e.g., OAH No. 07-0141-PFD, *supra*.

¹³ See, e.g., Alaska Center for the Environment v. State, Office of the Governor, 80 P.3d 231, 241 (Alaska 2003); Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 161 (Alaska 1982).

"mailing receipt" within the meaning of 15 AAC 23.103(h)(1). His request to reapply should therefore be granted.

V. Order

1. The division's denial of a 2006 dividend is REVERSED.
2. B.T. shall be paid a 2006 Alaska Permanent Fund dividend.

DATED January 24,2008.

Andrew M. Hemenway
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 Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of February, 2008.

By: Jerry Burnett
Director, Admin. Services

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
2/26/08