

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
FROM THE COMMISSIONER OF REVENUE**

In the Matter of)	
)	
D. S. AND L. T.)	OAH No. 08-0325-PFD
)	Agency No. 2007-063-3447
<u>2007 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

D. S. and L. T. applied for a 2007 permanent fund dividend (PFD) using paper applications dated October 25, 2007 and received by the Permanent Fund Dividend Division (Division) October 26, 2007.¹ The Division denied the application initially and at the informal appeal level on the basis of untimeliness. Mr. S. and Ms. T. requested a formal hearing, and their case was heard on August 18, 2008. Mr. S. and Ms. T. appeared in person and Susan Pollard, on behalf of the Division, participated telephonically. Exhibits 1 through 6 were admitted into evidence. The hearing was recorded.

The Division's denial is AFFIRMED because their applications were filed late and did not qualify for any exception to the filing deadline.

II. Facts

Mr. S. and Ms. T. have lived in Alaska since 2001.² During the 2006 qualifying year for the 2007 dividend, they lived in Alaska.³ They were not members of the armed forces or disabled on March 31, 2007. The Division denied Mr. S. and Ms. T.'s applications for PFD's as untimely.⁴

Mr. S. and Ms. T. do not dispute that they filed their 2007 applications after the filing deadline. In his request for an informal appeal, Mr. S. stated "(T)he only reason why I didn't get PFD this year was of filing my application late, due to work related."⁵ Mr. S.'s informal appeal was unsuccessful.⁶ In her request for an informal appeal, Ms. T. stated "(T)he only reason why I

¹ Exhibit 1 .

² Exhibit 1, p. 2.

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 3, p. 2.

⁶ Exhibit 4, p. 1.

didn't received any PFD this year is because I filed my application late due to working.”⁷ Ms. T.'s informal appeal was unsuccessful.⁸

On June 25, 2008, Mr. S. and Ms. T. jointly filed their request for a formal hearing.⁹ In the formal appeal, Mr. S. and Ms. T. stated “(W)e did file our dividend but it's true that we came in after the deadline.”¹⁰

III. Discussion

The decision in this case derives from the application of the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year.¹¹ The only exceptions to the filing deadline allowed by law 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.¹²

Mr. S. and Ms. T. do not assert that they were members of the armed forces or disabled; accordingly, the March 31, 2007 deadline was absolute for them. To their credit, Mr. S. and Ms. T. candidly admit that their PFD applications were untimely. But they appealed because a friend told them that they could file after the deadline.¹³

The filing deadline is established by a regulation. Under 15 AAC 23.103(a), the application “must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed.

The Department of Revenue is bound by its own regulations. It was Mr. S. and Ms. T.'s responsibility to obtain and timely file their respective PFD applications. The Division is not allowed to make exceptions because it empathizes with the applicants.

IV. Conclusion

Because they applied too late, Mr. S. and Ms. T. cannot receive a 2007 dividend. This decision does not affect their ability to apply for a PFD in 2008 or future years.

⁷ Exhibit 3, p. 4.

⁸ Exhibit 4, p. 5.

⁹ Exhibit 6.

¹⁰ Exhibit 6, p. 2.

¹¹ AS 43.23.011(a); 15 AAC 23.103(a).

¹² *Id.*; 15 AAC 23.133.

¹³ Exhibit 6, p. 2.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of D. S. and L. T. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 6th day of January, 2009.

By: Signed
James T. Stanley
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 2nd day of February, 2009.

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

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