

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

In the Matter of	)	
	)	
D. R. and	)	
N. W.	)	OAH No. 08-0339-PFD
	)	Agency No. 2007-063-3640
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

D. R. and N. W. (R. and W.) applied for 2007 permanent fund dividends (PFD) with paper applications dated November 6, 2007 and received by the Permanent Fund Dividend Division (Division) on that same date.<sup>1</sup> The division denied the applications initially and at the informal appeal level on the basis of untimeliness.<sup>2</sup> On July 7, 2008, R. and W. requested a formal hearing by written correspondence.<sup>3</sup> Exhibits 1 through 7 were admitted into evidence.

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

**II. Facts**

R. and W. have lived in Alaska for more than twenty years.<sup>4</sup> During 2006, the qualifying year for the 2007 dividend, they lived in Alaska.<sup>5</sup> Other than during the first few years of the PFD program, R. has consistently applied for and received a PFD.<sup>6</sup> W. has received a PFD each year, from inception of the program through 2006<sup>7</sup>

R. and W. assert that they used the state forms and envelope to complete and mail in their applications for a 2007 dividends. The timing and application process were purportedly the same as they had done for many prior years. They did not ask for a delivery confirmation from the postal service. Once mailed, they claim that the applications were not returned, leading them to believe that the Division had timely received their applications in the normal course of

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<sup>1</sup> Exhibit 1 (2007 Adult Applications).

<sup>2</sup> Exhibit 4.

<sup>3</sup> Exhibit 5.

<sup>4</sup> Exhibit 6, p. 3. (supplementary materials filed by applicants on July 29, 2008).

<sup>5</sup> Exhibit 1 (2007 Adult Applications).

<sup>6</sup> Exhibit 6, p.2.

<sup>7</sup> Exhibit 6, p.2.

events.<sup>8</sup> When the PFD's did not appear in their bank account (or accounts), R. and W. proceeded to the PFD office in Anchorage. They were told that the Division had no record of receiving their applications.<sup>9</sup> On November 6, 2007, they filed their "replacement" applications.<sup>10</sup>

The Division denied R. and W.'s November 6, 2007 applications because they were filed after the March 31 deadline.<sup>11</sup> R. and W.'s informal appeals filed on December 12, 2007 were unsuccessful.<sup>12</sup> This formal appeal by correspondence followed.<sup>13</sup> On July 29, 2008, R. and W. timely filed supplementary materials in support of their appeals.<sup>14</sup>

### **III. Discussion**

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>15</sup> The only exceptions to the filing deadline allowed by law are for certain disabled people who demonstrate that their disability prevented 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>16</sup> Because R. and W. are not within one of these categories, the March 31, 2007 deadline was absolute for them.

Whether an application is considered timely delivered is established by a regulation, 15 AAC 23.103(g), the relevant portion of which reads:

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 an application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting.

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<sup>8</sup> Exhibit 3.

<sup>9</sup> Exhibit 3, p. 1.

<sup>10</sup> Exhibit 1.

<sup>11</sup> Exhibit 2 (2007 Denial Letter).

<sup>12</sup> Exhibit 4 (Informal Appeal Decision).

<sup>13</sup> Exhibit 5.

<sup>14</sup> Exhibit 7.

<sup>15</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>16</sup> AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

Under 15 AAC 23.103(h), if an application was timely mailed but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year if the “reapplication” is accompanied by a mailing receipt or a mailing return receipt showing that the original application was timely mailed.<sup>17</sup>

R. and W. have not provided a mailing receipt or return receipt. Because they did not use one of those services, their only remedy would be to obtain an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original application to be delayed or lost. R. and W. have not provided a statement from the postal service describing such a circumstance.

R. and W. have indicated that they mailed their applications before the March 31, 2007 deadline. Assuming that they did timely mail their applications, the Department of Revenue remains bound by its own regulations. Since the department does not have their applications—whether it be an error by the sender, an error by the postal service, an error by the PFD Division, or some occurrence beyond the control of any of them<sup>18</sup>—the dividend can be paid only if R. and W. produce evidence bringing them within an exception to the timely filing requirement. R. and W. have not produced such evidence. The regulations do not permit any discretion in this situation and R. and W.’s 2007 PFD applications cannot be considered timely.

Government officials can only pay a dividend to people who qualify and who either make a timely application or can show that they correctly took the steps to make a timely application. For 2007, R. and W. did not make that showing, and therefore they do not fall among the applicants to whom the officials can pay the PFD.<sup>19</sup>

The Department of Revenue is bound by its own regulations. It was R. and W.’s responsibility to obtain and timely file a PFD application.<sup>20</sup> Unfortunately for R. and W., the Division is not allowed to make exceptions because it empathizes with applicants.

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<sup>17</sup> 15 AAC 23.103(h).

<sup>18</sup> R. and W. could have, in effect, purchased insurance against such an event by sending their applications by certified mail. They chose not to do so.

<sup>19</sup> R. and W. argue that 15 AAC 23.103(h)(2) allows them to introduce “...other evidence of receipt by the department.” While the written statements of R. and W. can be accepted as evidence, their statements are not *evidence of receipt by the department*. R. and W. also argue that AS 42.23.011(c) allows them to file their applications late for “good cause”. AS 42.23.011 applies only to individuals, serving on active duty as a member of the armed forces of the United States, while such member is eligible for hostile fire or imminent danger pay.

<sup>20</sup> 15 AAC 23.103(g).

**IV. Conclusion**

Because they applied too late, R. and W. cannot receive 2007 dividends. This decision does not affect their ability to qualify for dividends in 2008 or future years.

**V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of R. and W. for 2007 permanent fund dividends is AFFIRMED.

DATED this 8th 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 6th day of February, 2009.

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