

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

In the Matter of	)	
	)	
L. G, T. G,	)	
L.C. R. G, E. G and	)	
S. R. and R. P. G	)	
(minor children)	)	OAH No. 08-0351-PFD
	)	Agency No. 2007-063-0489
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

The postmark deadline to apply for a 2007 permanent fund dividend (PFD) was March 31, 2007. The Gs' application forms were placed in the outgoing mail outside the Eagle River post office on March 31, 2007, but did not receive a postmark until April 2, 2007. The Permanent Fund Dividend Division (division) denied the applications initially and at the informal appeal level for the reason that they were untimely. The G.s requested a formal hearing, which took place on August 28, 2008.

The division's denial of the G.s' applications is affirmed because the statutes and regulations provide no discretion to pay dividends in this situation.

**II. Material Facts**

There are no issues regarding the G.s' eligibility for the 2007 dividend apart from the timeliness of their applications. The G.s live in Eagle River. They put all of their 2007 PFD applications in one envelope for mailing to the PFD division.<sup>1</sup> L. signed her application on February 10<sup>th</sup>, T. signed his on March 26<sup>th</sup>, E. signed hers on March 30<sup>th</sup> and L.C. R. signed hers on March 31<sup>st</sup>; additionally, L. signed the applications of S. and R. as their sponsor on March 26<sup>th</sup>.<sup>2</sup>

L and L.C. R. drove from their house to the post office in Eagle River at about 4 p.m. on the afternoon of Saturday, March 31, 2007 and deposited the envelope in the outside mailbox, believing they had mailed it on time. It is not clear when it was picked up from the mailbox, but

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<sup>1</sup> Exh. 3 at pg. 2.  
<sup>2</sup> Exh. 1 at pgs. 2-10.

the envelope was postmarked in Anchorage on April 2, 2007.<sup>3</sup> The applications were received in Juneau on April 4, 2007.<sup>4</sup>

The division denied all of the G. PFD applications on June 27, 2007, for the reason that they were postmarked after March 31, 2007.<sup>5</sup> The family filed informal appeals on July 31, 2007,<sup>6</sup> which were likewise denied for the reason that they were untimely and the G.s did not show that the postal service “incorrectly posted or caused a delay in the posting of” their applications.<sup>7</sup> This appeal followed.

### **III. Discussion**

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>8</sup> The only exceptions to the deadline allowed by law are for certain military members who were eligible for imminent danger or hostile fire pay during the application period. These exceptions do not apply to any of the G.s, so the March 31 deadline was absolute for them.<sup>9</sup>

Whether a mailed application is considered timely posted 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. . . .

The Department of Revenue is bound by its own regulations. The regulations leave neither the division nor the administrative law judge any discretion in this matter. In the G.s’ situation, there was only one way around the late postmark: they would have had to get an official

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<sup>3</sup> Exh. 1 at pg. 1.

<sup>4</sup> *Id.*

<sup>5</sup> Exh. 2.

<sup>6</sup> Exh. 3.

<sup>7</sup> Exh. 5.

<sup>8</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>9</sup> AS 43.23.011(b), (c). Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline. See AS 43.23.055(3), (7).

statement from the postal service showing that incorrect handling or delay by the postal service caused the late postmark.

L and L.C. R. appeared at the hearing and presented argument on behalf of all the family members. They argue that their applications were late because the postal service should have postmarked their PFD application envelope on the day it was put in the mailbox. They suggest it was an operational error that caused their envelope not to be postmarked in Eagle River on the day they deposited it, but rather two days later in Anchorage. The G.s' argument is not convincing because it assumes the postal service guarantees that mail deposited in an outside post office mailbox will be postmarked on the same day. There is no evidence in the record to support that assumption, nor the assumption that mail deposited in Eagle River must be postmarked there. L and L.C. R. testified that the Postmaster at the Eagle River post office declined to write them a statement confirming any incorrect handling or delay on the part of the postal service. Without such an official statement, the Department of Revenue has no discretion in this matter. It cannot consider the G.s' applications to be timely.

The minor children, S. and R., may apply for their 2007 PFD on their own behalf as each child reaches the age of eighteen, so long as each child does so before reaching the age of 20.<sup>10</sup> Because this opportunity will be lost after the child reaches 20 years of age, the G.s should remind each child to apply immediately after her eighteenth birthday. Also, it would be wise for the parents to keep a copy of this decision and attach it to S.'s and R.'s applications.

#### **IV. Conclusion**

The 2007 PFD applications of T. G., L. G., L.C. R. G., E. G., S. G. and R. G. should be denied because their applications on file with the division were submitted after the deadline and they did not meet the requirements of AS 43.23.011(a) and 15 AAC 23.103(a). This decision should not affect their status as residents or their eligibility for 2008 and future dividends. Nor should it affect the children's eligibility to apply for a 2007 PFD as each child reaches the age of eighteen.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of T. G., L. G., L.C. R. G., E. G., S. G. and R. G. for 2007 permanent fund dividends is AFFIRMED. This decision does not affect their status as residents or their

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<sup>10</sup> 15 AAC 23.133(b)-(c) (changed from 19 years of age effective January 1, 2008).

eligibility for 2008 and future dividends. Nor does it affect the children's eligibility to apply for a 2007 PFD as each child reaches the age of eighteen.

DATED this 7th day of November 2008.

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 5th day of December, 2008.

By: Signed  
Signature  
Christopher Kennedy  
Name  
[Commissioner's Delegee]  
Title

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