

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

In the Matter of)	
)	
M. L., and)	
C. L. and K. L.)	
(minor children))	OAH No. 08-0352-PFD
)	Agency No. 2007-063-1250
<u>2007 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

M. L. appeals the Permanent Fund Division’s determination that she and her two children, C. and K., were ineligible for a 2007 PFD because their applications were not timely filed. Ms. L. requested a formal hearing by correspondence. The division’s denial is affirmed because the application was filed late and the L.s did not qualify for any exception to the deadline.

II. Facts

M. L. and her children, C. and K., live in Naukati Bay, also known as Naukati West, a small logging community located on the west coast of Prince of Wales Island in Southeast Alaska.¹ Ms. L. signed their applications on March 15, 2007, and sometime thereafter dropped the envelope containing the applications at the local post office for delivery to the PFD division.² The envelope was postmarked in Naukati Bay on April 9, 2007, and was received in Juneau on April 12, 2007.³

The division denied all of the L. PFD applications on August 1, 2007, for the reason that they were postmarked after March 31, 2007.⁴ Ms. L. filed an informal appeal on September 7, 2007,⁵ which was likewise denied for the reason that the applications were untimely and Ms. L. did not show that the postal service “incorrectly posted or caused a delay in the posting of” their applications.⁶ This appeal followed.

¹ This information was obtained from the Alaska Community Database, a website provided by the Department of Commerce, Community & Economic Development, Division of Community and Regional Affairs. The information about Naukati Bay is located at http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm.

² Exh. 1 at pg. 1.

³ *Id.*

⁴ Exh. 2.

⁵ Exh. 3.

⁶ Exh. 5.

III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.⁷ 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 L.s, so the March 31 deadline was absolute for them.⁸

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 L.s' situation, there was only one way around the late postmark: they would have had to get an official statement from the postal service showing that incorrect handling or delay by the postal service caused the late postmark.

Ms. L. did not specify when she deposited the applications at the post office, but she stated that because of weather conditions, mail from her remote location would be delayed if the planes could not land. Her statement also said that the Naukati post office has five people handling the mail who are "uncertified" and "community donated," which suggests they are not trained postal service employees. Other than that brief explanation, Ms. L. did not submit 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 L.s' applications to be timely.

⁷ AS 43.23.011(a); 15 AAC 23.103(a).

⁸ 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).

The minor children, C. and K., 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 20.⁹ Because this opportunity will be lost after the child reaches 20 years of age, Ms. L. should remind each child to apply immediately after his eighteenth birthday. Also, it would be wise for Ms. L. to keep a copy of this decision and attach it to the applications C. and K. file upon reaching 18 years of age.

IV. Conclusion

The 2007 PFD applications of M. L., C. L. and K. L. 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 M. L., C. L. and K. L. for 2007 permanent fund dividends is AFFIRMED. This decision does not affect their status as residents or their 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

⁹ 15 AAC 23.133(b)-(c) (changed from 19 years of age effective January 1, 2008).

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

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