

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

In the Matter of :	)	
	)	
B. R. O., K. O'D. O.,	)	
and B. A. O. (minor)	)	
	)	OAH No. 08-0354-PFD
<u>2007 Alaska Permanent Fund dividend</u>	)	DOR No. 2007-063-1790

**DECISION and ORDER**

**I. Introduction**

B. O., her adult son K. O'D. O., and her minor daughter B. A. O., filed untimely applications for 2007 Alaska Permanent Fund dividends. The Permanent Fund Dividend Division (Division) denied the applications. Ms. O. filed timely appeals for all three denials and requested a hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on September 4, 2008. Ms. O. participated and Susan Pollard represented the division.

Because Ms. O. did not show that any of the late applications are excused due to a disability of Ms. O., the Division's decision to deny all B. and B. A. O.'s applications is affirmed. The Division is ordered to take steps to assist K. O'D. O. in completing an application pursuant to 15 AAC 23.133(d). B. A. O. may file an application after she reaches the age of eighteen, pursuant to 15 AAC 23.133(b).

**II. Facts**

B. O., her adult son K. (who turned 19 in 2007), and her minor daughter B. A. (who turned 16 in 2007) have lived in Alaska for about four years. In 2007, they were living in Fairbanks. K., who has been diagnosed as ADHD, was receiving social security disability payments; his treating physician was Dr. Evans. He depended on his mother to assist him in his personal business affairs.

Since 2006, Ms. O. had been experiencing health problems. In 2006 she had abdominal surgery, and between January 1 and March 31, 2007, she was recuperating at home. She was also hospitalized at some point during that period of time. Later in 2007, she was hospitalized for short periods of time and had surgery. Because she was limited in her ability to move about, distracted by her medical problems and the difficulties of providing care for her dependent

children, Ms. O. failed to file timely applications for her own and her daughter's 2007 dividends, or to ensure that her son filed a timely application.

### III. Discussion

An application for a permanent fund dividend must be filed during the period beginning January 1 and ending March 31 of the dividend year.<sup>1</sup> A parent may file an application on behalf of an unemancipated minor or a disabled adult.<sup>2</sup> After the application period has ended, an untimely application may be submitted by a person who was disabled during the application period and as a result of the disability did not file a timely application.<sup>3</sup> An untimely application due to disability must include certification from a licensed health care provider that the applicant was disabled on March 31, and "a statement explaining why the disability prevented the applicant from timely filing an application."<sup>4</sup> The Division is required by law to assist disabled persons in filing applications and establishing eligibility.<sup>5</sup>

Ms. O.'s appeal form asserts that both of her children depended on her to file applications for them, and that she was unable to file timely applications because she was "in the hospital under going treatment" and that she "was sick just trying to live and feel better for my children".<sup>6</sup> In response to her appeal, in May, 2008, the Division sent Ms. O. a form for her health care provider to complete concerning the existence of a disability.<sup>7</sup> Ms. O. returned the form to the Division but it was not signed by her health care provider.<sup>8</sup> At the hearing, Ms. O. stated that she had been hospitalized at some point between January 1 and March 31, 2007, but that her first surgery was in June, 2007. She stated that she had been too ill to get the applications out. After the hearing, Ms. O. was again provided a copy of a form to be completed by a health care provider in support of her own application; the Division also provided a separate form on behalf of her son K.'s application.<sup>9</sup> The Division did not receive a completed form for either B. or K. O. before the record closed.

---

<sup>1</sup> AS 43.23.011(a).

<sup>2</sup> AS 43.23.005(c); -.015(d).

<sup>3</sup> 15 AAC 23.133(d).

<sup>4</sup> 15 AAC 23.133(d)(2).

<sup>5</sup> AS 43.23.055(4).

<sup>6</sup> Ex. 3, pp. 2, 4, 6.

<sup>7</sup> Ex. 6, p. 1.

<sup>8</sup> Ex. 6, p. 3. With the form, Ms. O. submitted an authorization for release of pathology specimens signed by her health care provider and dated June 17, 2007.

<sup>9</sup> Letter, K. Colby to B. O., September 4, 2008.

An individual is disabled for purposes of the dividend if the person is physically or mentally unable to complete and sign an application due to a serious emotional disturbance, among other reasons.<sup>10</sup> Ms. O. was limited in her ability to move about and conduct her affairs during the period from January 1-March 31, 2007, but her testimony did not support the existence of disability that rendered her unable to complete and sign an application prior on March 31, 2007. Furthermore, she did not provide a statement from her health care provider to support a request to submit a late application. Accordingly, Ms. O. did not show that the Division's decision to deny the applications for herself and her minor child was erroneous. However, B. A. O. may reapply after she reaches the age of 18, and further proceedings are necessary with respect to K. O.

15 AAC 23.133(b) allows a minor child to submit an application for a prior year's dividend after reaching age 18. B. A. O. will turn 18 on May XX, 2009, and she should submit an application for the 2007 dividend at that time. The application must be filed before she turns 20 (May XX, 2011).

15 AAC 23.133(d) allows a disabled person to apply for a prior year's dividend if, as a result of the disability, the person did not file a timely application. Whether his mother had a disability during the application period has no bearing on whether Mr. O. did. In this case, it is undisputed that Mr. O. was disabled for purposes of Social Security. This raises a question as to whether he was also disabled for purposes of the dividend. The Division is required by law to assist him in filing an application and in establishing his eligibility.<sup>11</sup>

#### **IV. Conclusion**

Ms. O. did not establish by a preponderance of the evidence that her failure to file timely applications for herself, her minor daughter, and her disabled son was the result of a disability that she had.

---

<sup>10</sup> AS 43.23.095(2).

<sup>11</sup> AS 43.23.055 states: "The department shall...(4) assist residents of the state...who because of...disability...need assistance to establish eligibility and to apply for permanent fund dividends." Whether Mr. O. is, in fact, disabled as defined in AS 43 .23.095(2) should be determined after the division has taken reasonable steps to assist Mr. O. in attempting to establish that fact.

**B. A. O. is eligible to apply for a 2007 dividend upon reaching 18 years of age.<sup>12</sup> This application must be made before her twentieth birthday, or this opportunity will be permanently lost.**

**V. Order**

1. The Division's denial of B. O.'s applications for a 2007 Alaska Permanent Fund dividend for herself and for her minor daughter, B. A. O., is AFFIRMED.
2. K. O.'s application for a 2007 Alaska Permanent Fund dividend is REMANDED to the Division. The Division shall provide reasonable assistance to Mr. O. in completing that application and in establishing eligibility. The Office of Administrative Hearings does not retain jurisdiction of his application and Mr. O. may file an appeal from the Division's action on remand.

DATED November 17, 2008.

Signed  
\_\_\_\_\_  
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 18th day of December, 2008.

By: Signed  
\_\_\_\_\_  
Signature  
Andrew M. Hemenway  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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

---

<sup>12</sup> 15 AAC 23.133(b)(3).