

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

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|-------------------------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| R. K. S. |) | OAH No. 08-0369-PFD |
| |) | Agency No. 2006-041-3189 |
| <u>2006 Permanent Fund Dividend</u> |) | |

DECISION AND ORDER

I. Introduction

The deadline to apply for a 2006 permanent fund dividend (PFD) was March 31, 2006. After failing to receive a dividend, R. K. S. applied on February 9, 2007. The Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis of untimeliness. Mr. S. requested a formal hearing, which was calendared for September 2, 2008, and held on October 16, 2008.

The division's denial of Mr. S.'s application is affirmed because the statutes and regulations provide no discretion to pay a dividend in his situation.

II. Material Facts

R. K. S. is a longtime Alaska resident who has received PFDs in the past. He spent 2005, the qualifying year for the 2006 dividend, in the state.¹ There are no issues regarding his eligibility for the 2006 dividend, provided he applied timely.

In October 2006, when he did not receive his dividend payment, Mr. S. contacted the PFD division and was instructed to refile his application. He did not know there was a deadline to refile and it is not known whether the person he spoke to told him about the deadline. Mr. S. signed the application on January 4, 2007, and it was received by the PFD division on February 9, 2007.²

Mr. S.'s application was denied as untimely on February 28, 2007.³ He submitted an informal appeal on March 13, 2007, in which he stated he files his application each year right when he gets his booklet and he filed for the 2006 PFD in January 2006, but no later than the first week in February 2006.⁴

¹ Exh. 1 at pg. 1.

² Exh. 1 at pgs. 1-3.

³ Exh. 2.

⁴ Exh. 3 at pg. 2.

Mr. S.'s informal appeal was likewise denied on January 31, 2008.⁵ The denial letter informed Mr. S. that if he wished to appeal and request a formal hearing, he had 30 days from the date of the denial letter to make the request.⁶ Mr. S. filed an appeal and request for a formal hearing on July 9, 2008, a little over five months later.⁷

At the hearing, Mr. S. testified that he filed his PFD application on time, as he has always done. He stated that he has been an Alaska resident for 43 years and he has never before had to provide proof he mailed his application on time.

III. Discussion

In order to qualify for a PFD, an applicant must file a timely application.⁸ The application period runs from January 2nd through March 31st of the applicable year.⁹ To supplement these laws, the Department of Revenue, of which the PFD Division is a part, has adopted the following regulation:¹⁰

If an individual has timely filed an application but the department does not have that application on file, the individual may submit a request to reapply on or before December 31 of the dividend year. A request to reapply must be accompanied by one of the following forms of evidence that an application was timely filed with the department:

(1) a mailing receipt;

(2) a mailing return receipt documenting delivery to the department or other evidence of receipt by the department; or

* * * * *

(4) a copy of the computer generated confirmation page containing the confirmation number received by the applicant after completing the online filing process.

However, the reapplication had to be made “on or before December 31 of the dividend year.”¹¹ Mr. S. did not submit the reapplication until after the end of the dividend year. The December 31 deadline is absolute, with no discretion in the law for a waiver. Another regulation, 15 AAC 23.133, provides that an application for a dividend for a prior year “will be

⁵ Exh. 4.

⁶ Exh. 4 at pg. 2.

⁷ Exh. 5.

⁸ AS 43.23.005(a)(1).

⁹ AS 43.23.011(a).

¹⁰ 15 AAC 23.103(h).

denied” unless it fits one of several narrow exceptions for minors just reaching majority, disabled individuals, or individuals under state guardianship;¹² none of the exceptions apply to Mr. S.

It is not known why Mr. S. filed after December 31 – most likely he was not aware of the law. While understandable, this explanation does not enable the state to pay him a dividend. The Department of Revenue is bound by its own regulations and by the statutes the legislature has passed to govern the PFD program. The department is not allowed to make exceptions because it sympathizes with people. A person must not only meet residency criteria, but he or she must also file a timely application in order to receive a Permanent Fund dividend. “It is an individual's responsibility to ensure that an application is timely delivered to the department.”¹³

IV. Conclusion

Because Mr. S.’s application was submitted after the deadline and he did not meet the requirements of 15 AAC 23.103(h), his application must be denied. This decision does not affect his status as a resident or his eligibility for 2007 and future dividends.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of R. K. S. for a 2006 permanent fund dividend is AFFIRMED. This decision does not affect his status as a resident or his eligibility for 2007 and future dividends.

DATED this 6th day of November 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ 15 AAC 23.103(h).

¹² 15 AAC 23.133(b) – (e). There is also a statutory exception for members of the armed services eligible for hostile fire or imminent danger pay (AS 43.23.011(b), (c)), likewise not applicable here.

¹³ 15 AAC 23.103(g).

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]