

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

In the Matter of	)	
	)	
M. D. A.	)	OAH No. 08-0397-PFD
	)	Agency No. 2007-063-3353
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

M. D. A. applied for a 2007 permanent fund dividend (PFD) with a paper application dated October 25, 2007 and received by the Permanent Fund Dividend Division (Division) on October 29, 2007.<sup>1</sup> The Division denied the application initially and at the informal appeal level on the basis of untimeliness.<sup>2</sup> On November 26, 2007, Mr. A. requested an informal appeal.<sup>3</sup> On June 30, 2008, the Division denied Mr. A.'s informal appeal. Mr. A. filed his request for a formal hearing on July 28, 2008. The Division filed its formal hearing position statement on Septemeber 2, 2008.

The formal hearing in this matter was held September 17, 2008 before Administrative Law Judge James T. Stanley. Mr. A. testified by telephone. Susan Pollard testified by telephone on behalf of the Division. The hearing was recorded. Exhibits 1 through 6 were admitted into evidence.

The Division's denial is AFFIRMED because Mr. A.'s application was filed late and he did not qualify for any exception to the filing deadline.

**II. Facts**

Mr. A. first filed for a PFD in 1994.<sup>4</sup> Mr. A. has received a PFD each year from 1994 through 2006.<sup>5</sup>

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

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Mr. A.'s testimony.

<sup>5</sup> Mr. A.'s testimony.

Mr. A. asserts that he used the state form and envelope to complete and mail in his application for a 2007 dividend prior to deadline. His timing and application process were purportedly the same as he had done for many prior years. He did not ask for a delivery confirmation from the postal service. When the PFD did not appear in his bank account as requested, Mr. A. contacted the PFD office in Anchorage. He was told that the Division had no record of receiving his application.<sup>6</sup> On October 29, 2007, he filed his “replacement” application.<sup>7</sup>

The Division denied Mr. A.’s October 29, 2007 application because it was filed after the March 31 deadline.<sup>8</sup> Mr. A.’s informal appeal request was filed on November 26, 2007.<sup>9</sup> His informal appeal was denied by the Division on June 30, 2008 because his application was not filed on or before March 31, 2007.<sup>10</sup> This formal appeal was filed July 28, 2008.<sup>11</sup>

### **III. Discussion**

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>12</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>13</sup> Because Mr. A. is not within one of these categories, the March 31, 2007 filing deadline was absolute for him.

Whether an application is considered timely delivered to the Division 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

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<sup>6</sup> Mr. A.’s testimony.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 2 (2007 Denial Letter).

<sup>9</sup> Exhibit 3.

<sup>10</sup> Exhibit 4, p. 1 (Informal Appeal Decision).

<sup>11</sup> Exhibit 5.

<sup>12</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>13</sup> AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting.

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>14</sup>

Mr. A. has not provided a mailing receipt or return receipt. Because he did not obtain proof of mailing, his 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. Mr. A. has not provided a statement from the Postal Service describing such a circumstance.

Mr. A. has indicated that he mailed his application before the March 31, 2007 deadline. Assuming that he did timely mail his application, the Department of Revenue remains bound by its own regulations. Since the department does not have his application on record — whether the missing application is the result of an error by the sender, an error by the postal service, an error by the PFD Division, or some other occurrence beyond the control of any of them<sup>15</sup> — the dividend can be paid only if Mr. A. produces evidence bringing himself within an exception to the timely filing requirement. Mr. A. has not produced such evidence. The regulations do not permit any discretion in this situation and Mr. A.'s 2007 PFD application cannot be considered timely.

Government officials can only pay a PFD 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 the PFD payable in 2007, Mr. A. did not make that showing, and therefore he does not fall among the group of applicants to whom the officials can pay the PFD.

The Department of Revenue is bound by its own regulations. It was Mr. A.'s responsibility to obtain and timely file a PFD application.<sup>16</sup> Unfortunately for Mr. A., he does

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<sup>14</sup> 15 AAC 23.103(h).

<sup>15</sup> Mr. A. could have, in effect, purchased insurance against such an event by sending his application by certified mail. He chose not to do so. Other acceptable proof of mailing can be a USPS delivery confirmation receipt, Fedex, UPS, or DHL delivery receipts.

<sup>16</sup> 15 AAC 23.103(g).

not have proof of mailing and the Division is not allowed to make exceptions because it empathizes with the applicant.

**IV. Conclusion**

Because he applied too late, Mr. A. cannot receive a 2007 dividend. This decision does not affect his 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 application of Mr. A. for a 2007 permanent fund dividend 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 6<sup>th</sup> day of February, 2009.

By: Signed  
Signature  
James T. Stanley  
Name  
Administrative Law Judge  
Title

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