

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

IN THE MATTER OF )  
 )  
 J. & P. G. and their )  
 children E. & A. G. )  
 ) Case No. OAH 08-0402-PFD  
 )  
2007 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

J. and P. G. filed late applications for themselves and their children for the purpose of initiating this appeal regarding applications for 2007 permanent fund dividends that they allege were mailed during the 2007 application period. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. The G.s requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on September 15, 2008. Mr. G. represented the entire family by telephone. The division was correctly following the law when it made the decision to deny the G.s’ applications, and the decision should be affirmed.

**II. Facts**

The applicants have lived in Alaska for a period spanning decades, and the children were born and raised in Alaska.

Ms. G. submitted a letter stating that she had mailed an envelope containing dividend applications for each member of the family on March 5, 2007. Ms. G. wrote that “When I got up and left for work, I had the envelope with my entire family’s applications in it. I always go up to the window at the C.’s C. Post Office, have the clerk weigh it and stamp it and she handles it from there. I always write on my calendar when I do this. This is the only proof I have.” Ms. G. attached a copy of an appointment calendar for March 2007. This calendar shows a number of entries typical of a family schedule, such as spring break, birthday parties, trips and babysitting appointments. An entry on the calendar for March 5 reads, “Mailed Dividends.”

Ms. G. did not appear at the hearing, but Mr. G. testified that his wife’s calendar is kept posted on the wall in her office and that in the conduct of her bed-and-breakfast business Ms. G. updates and relies upon the calendar daily or weekly. Mr. G. testified that he also relies on the calendar, and has found Ms. G.’s updates to be reliable.

### III. Discussion

With certain exceptions that do not apply to this case, applications for permanent fund dividends must be filed between January 2 and March 31 of the dividend year.<sup>1</sup> It is the applicant's responsibility to ensure that an application is timely delivered to the department.<sup>2</sup>

This case is governed specifically by 15 AAC 23.103(h), which reads:

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
- (3) repealed 1/1/2006;
  - (A) repealed 1/1/99;
  - (B) repealed 1/1/99;
- (4) a copy of the computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process.

This regulation recognizes the possibility that there are many reasons why the division might not have an application on file for someone who actually filed or mailed one on time. The Postal Service can lose envelopes, division employees can lose documents, applicants can lose envelopes they thought they had mailed, thieves and vandals can steal or destroy documents, and computer systems can fail and result in lost data. In all of these situations, the law places the responsibility for proving that applications were timely filed on the applicant, regardless of the possibility of error on the division's part. Further, the division will accept only the specified kinds of evidence as proof that the applicant did in fact file an application on time.

Because they did not apply for their dividends using the online application procedure, the G.s do not have the kind of evidence described in subparagraph (4) of the above regulation. The applicants did not send their applications with a return receipt requested, nor can they produce "evidence of receipt by the department," which might include a copy of an application stamped with the division's "received" date stamp, or correspondence from the division acknowledging a timely

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<sup>1</sup> AS 43.23.011.

<sup>2</sup> 15 AAC 23.103(g).

application, or possibly even other evidence that the division actually received the applications. There is no such evidence in this case.

The division has consistently denied applications in other similar cases when the applicants cannot produce one of the specified forms of evidence documenting timely mailing or filing, such as a mailing receipt, and those decisions have consistently been upheld.<sup>3</sup> While doing so may be particularly unpleasant in cases involving long-time Alaska residents with children born and raised in the state, this decision is consistent with the law.

#### **IV. Conclusion**

The division does not have timely applications on file for the applicants. The applicants have not provided documentation of timely mailing or filing in one of the forms allowed by 15 AAC 23.103(h). Because the division was correctly following the law when it made the decision, the division's decision to deny the applications of J. G., P. G., E. G. and A. G. for 2007 permanent fund dividends is AFFIRMED.

**NOTICE REGARDING ELIGIBILITY OF CHILDREN:** The children in this case may be eligible to apply for their 2007 permanent fund dividends in their own names upon reaching the age of majority or otherwise emancipating. It is important that the children be reminded to apply for their 2007 dividends as soon as they reach the age of 18. If the children do not apply for these dividends before reaching the age of 20, this opportunity will be permanently lost.

DATED this 20th day of November, 2008.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

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<sup>3</sup> In the following OAH cases, applications for 2006 dividends were denied in spite of evidence showing that applications were timely mailed or delivered to the division, but the evidence was not in one of the forms required by 15 AAC 23.103(h): 07-0484-PFD; 07-0446-PFD; 07-0426-PFD; 07-0441-PFD; 07-0380-PFD; 07-0222-PFD; 07-0361-PFD; 07-0362-PFD; 07-0398-PFD.  
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### 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 16th day of December, 2008.

By: Signed Terry L. Thurbon for  
Signature  
Dale A. Whitney  
Name  
Administrative Law Judge  
Title

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