

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

In the Matter of:)
)
C. K., R. B., Sr.,)
and H. K.-B., S. B., and)
R. B., Jr. (minors))
) OAH No. 08-0404-PFD
2007 Alaska Permanent Fund dividend) DOR No. 2007-063-3441

DECISION

I. Introduction

C. K. and R. B., Sr., submitted timely requests to reapply for 2007 dividends for themselves and their minor children. The Permanent Fund Division (Division) denied the requests on the ground that they were not supported by required documentation. Ms. K. and Mr. B. filed an appeal and the case was referred to the Office of Administrative Hearings for hearing by correspondence.

Because the request to reapply was accompanied by the required documentation and there is no other ground for denial, the Division's decision is reversed.

II. Facts

C. K. and R. B., Sr. and their children are Alaska residents who are eligible for a 2007 dividend if they have met the applicable filing requirements.

C. K. and R. B., Sr., live in No Name Village. On or about March 31, 2007, C. K. and R. B., Sr., filled out Alaska Permanent Fund dividend applications for themselves and their minor children, H., S. and R., Jr. They placed the applications in an envelope and deposited it in the custody of the local postmaster for No Name Village in time to be postmarked prior to April 1, 2007. For unknown reasons, the applications were lost in the mail and did not arrive at the Division's Anchorage office.

III. Discussion

Generally, to receive an Alaska Permanent Fund dividend, an eligible individual must file an application no later than March 31 of the dividend year.¹ The individual must apply using the

¹ AS 43.23.005(a)(1); -.011(a). Certain individuals on active duty in the armed forces may apply at a later date. See AS 43.23.011(c).

application form provided by the division, which, to be considered timely, must be received or postmarked no later than the filing deadline.²

If an individual timely files an application, but the division does not have the application on file, the individual may submit a request to reapply.³ A request to reapply must be accompanied by one or more specified types of evidence that an application was timely filed. For mailed filings, the request to reapply must be accompanied by a mailing receipt or evidence of receipt by the department.⁴

The referenced regulations, read together, provide for payment of a dividend to eligible applicants when (1) the applicant submitted a timely application and (2) either (a) the division has a timely application on file; or (b) the division does not have a timely application on file, but a timely reapplication is filed, accompanied by the required evidence of timely filing.

Ms. K. has repeatedly asserted, in writings submitted under penalty of false swearing, that she and Mr. B. timely mailed their applications. There is no evidence to dispute her assertions other than the fact that the applications were not received. The Division's regulations anticipate precisely this situation, and address it by requiring the submission of a mailing receipt.⁵

The term "mailing receipt" in 15 AAC 23.103(h)(1) should be read in accordance with its common usage.⁶ In common usage, a "mailing receipt" is "a writing acknowledging the receipt of goods or money."⁷ In this case, Ms. K. and Mr. B. have submitted exactly that: a written statement by the No Name Village postmistress attesting to the receipt of their applications.⁸ That this occurred prior to the application deadline is implied in the postmistress's statement and established by the independent corroborative statements of the postmistress's supervisor, T. V.,⁹

² 15 AAC 23.103(a).

³ 15 AAC 23.103(h).

⁴ 15 AAC 23.103(h)(1), (2).

⁵ 15 AAC 23.103(h)(1) states:

(h) If an applicant 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...

⁶ AS 01.10.040(a); OAH No. 07-0141-PFD (2007) at 4, note 8.

⁷ OAH No. 07-0141-PFD (2007), *citing* WEBSTER'S COLLEGIATE DICTIONARY at 1038 (11th Ed. 2003).

⁸ Ex. 1, p. 2; Statement of S. A. (September 22, 2008).

⁹ Affidavit of S. Pollard, ¶(November 12, 2008). In addition, Mr. V. stated that Ms. A.'s work is "beyond reproach."

and a third party.¹⁰ Consistent with precedent in a prior similar case, the evidence should be deemed sufficient.¹¹

IV. Conclusion

Ms. K. and Mr. B. have submitted evidence sufficient to satisfy the requirements of 15 AAC 23.103(h)(1). Their requests to reapply are therefore granted.

DATED December 31, 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 27th day of January, 2009.

By: Signed

Signature
Andrew M. Hemenway

Name
Administrative Law Judge

Title

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

¹⁰ Statement of G. T. (September 22, 2008).

¹¹ See OAH No. 07-0400-PFD (October, 2007).