

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

In the Matter of)	
)	
K. J. N.)	OAH No. 08-0406-PFD
)	Agency No. 2007-063-2413
<u>2007 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

K. J. N. seeks to establish that she timely applied for a 2007 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application in its files, denied her application initially and at the informal appeal level. Ms. N. requested a formal hearing by correspondence.

The division's denial is affirmed because the only application on file was submitted late, Ms. N. has not provided the proof of timely mailing or delivery required by law, and it is not possible to find that her late application came about because of a disability or military service. Even if Ms. N. is correct in asserting that she mailed an earlier application and it was lost, Department of Revenue regulations provide no discretion to grant a dividend to her.

II. Facts

K. N. is an Anchorage resident, now in her forties, who has qualified for and received Permanent Fund Dividends since the inception of the program.¹ Apart from the question of timeliness of her application, she appears to have met all eligibility requirements for the 2007 dividend.²

Ms. N. has not submitted a statement from a health care provider establishing a disability. There is no evidence to find that Ms. N. is mentally or physically disabled. Ms. N. was not serving on active duty as a member of the armed forces of the United States in 2007.³

Ms. N. recalls mailing a paper 2007 PFD application in January of 2007.⁴ She did not use a certified or return receipt mailing service.⁵

¹ See Exhibit 1, p. 1 (2007 Adult Application); Exhibit 3, p. 2 (Request for Informal Appeal).

² See Exhibit 1 (2007 Adult Application).

³ *Id.*, p. 1.

⁴ Exhibit 3, p. 2 (Request for Informal Appeal).

⁵ Exhibit 5, p. 2 (Request for Formal Hearing).

On July 30, 2007, Ms. N. inquired about her application.⁶ She was told that there was no application on record from her.⁷ Ms. N. then submitted a new, late application, which the division received on August 30, 2007.⁸

The division denied Ms. N.'s August 2007 application because it was not filed by the March 31, 2007 deadline and she did not qualify for any exception to the filing deadline. The division checked its records by social security number and name, and found that for 2007 the only application it had for Ms. N. was the August 2007 application.⁹

By notice dated August 12, 2008, Ms. N. was given until September 12, 2008 to send any additional documents or correspondence for consideration in this formal appeal. The PFD Division was given the same deadline. Each party was given until September 22, 2008 to respond to any documents received from the other. The division filed a position statement with attached documents; Ms. N. filed nothing.

III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.¹⁰ 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.¹¹ Because Ms. N. is not within one of these categories, the March 31, 2007 deadline was absolute for her.

Whether an application is considered timely delivered 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 service

⁶ Exhibit 5, pp. 7-8 (website inquiry).

⁷ Exhibit 5, p. 7 (e-mail from PFD Division to Ms. N.).

⁸ Exhibit 1.

⁹ Exhibit 6 (Affidavit of Susan Pollard).

¹⁰ AS 43.23.011(a); 15 AAC 23.103(a).

¹¹ AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

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.¹²

Ms. N. has not provided a mailing receipt or return receipt. Because she did not use one of those services, her 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. Ms. N. has not provided a statement from the Postal Service describing such a circumstance.

Ms. N. has indicated that she mailed an application before the March 31, 2007 deadline. Assuming that she did timely mail her application, the Department of Revenue remains bound by its own regulations. Since the department does not have her application—whether it be an error by the sender, an error by the Postal Service, an error by the PFD Division, or some occurrence beyond the control of any of them¹³—the dividend can be paid only if Ms. N. produces evidence bringing her within an exception to the timely filing requirement. Ms. N. has not produced such evidence. The regulations do not permit any discretion in this situation and Ms. N.'s 2007 PFD application cannot be considered timely.

Government officials can only pay a dividend 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 2007, Ms. N. did not make that showing, and therefore she does not fall among the applicants to whom the officials can pay the PFD.

IV. Conclusion

Because Ms. N.'s only application on file was submitted after the deadline and she did not meet any of the exceptions to the filing deadline, her application is properly denied. This decision does not affect her status as a resident or her eligibility for 2008 and future dividends.

¹² 15 AAC 23.103(h).

¹³ Ms. N. could have, in effect, purchased insurance against such an event by sending her application by certified mail. She chose not to do so.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of K. J. N. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 5th day of December, 2008.

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of January, 2009.

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

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