

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

In the Matter of:	)	
	)	
L. C. H.,	)	
J. J. and S. C. R.	)	OAH No. 08-0418-PFD
(minor children)	)	Agency No. 2007-063-2531
	)	
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

L. C. H. seeks to establish that she timely applied for 2007 Permanent Fund Dividends (PFD) for herself and her two children, J. J. R. and S. C. R. The Permanent Fund Dividend Division (division), having no timely applications on file, denied their applications initially and at the informal appeal level. Ms. H. requested a hearing, which was held on September 18, 2008. Ms. H. appeared in person on behalf of herself and her children; PFD Specialist Kimberly Colby appeared by telephone for the division.

The division's denial is affirmed because the applications were filed late and did not qualify for any exception to the deadline. However, pursuant to a specific provision of the division's regulations, J. and S. R. may apply for their 2007 PFDs when each reaches the age of 18 years of age. They must do so before turning 20 years old, as discussed on page 3 of this decision.

**II. Material Facts**

L. C. H. and her children, J. J. R. and S. R., are Alaska residents and have received dividends in past years. Ms. H. attempted to file their 2007 PFD applications online but "it didn't work," so she prepared them for mailing instead.<sup>1</sup> She recalls the date was March 21, 2007 because she was on her way to work that evening and her mother had asked her about their applications. Ms. H. said that as she was leaving the house she held up the envelope to show her mother that she had the applications. She mailed all three applications in that one envelope from a postal box outside the Lake Otis post office in Anchorage.

On August 31, 2007, Ms. H. called the division to check on the status of her and the children's PFD applications and was informed there were no 2007 applications on file.<sup>2</sup>

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<sup>1</sup> Unless otherwise noted, the factual findings are derived from Ms. H.' hearing testimony.

<sup>2</sup> Exh. 6 at pg. 1.

Subsequently they submitted written applications that were received by the division on September 5, 2007.<sup>3</sup> The division denied their applications on October 3, 2007, because they were not filed before the March 31, 2007, filing deadline.<sup>4</sup>

Ms. H. claims the children and her mother were witness to her mailing the applications on time, but she acknowledged at the hearing that she was the only person in the car at the time she put the envelope in the post office box.

After Ms. H. testified she had originally tried to file online, the division requested and was granted permission to search its online database for evidence that Ms. H. had initiated online applications for herself and the children. On September 24, 2008, the division filed an affidavit from Sean Edwards, PFD Analyst/Programmer II. Mr. Edwards affied he performed a search of the online database, including the “first page data trap,” which would have made a record had Ms. H. entered identifying information and reached the end of the first application screen. The search was thorough – Mr. Edwards checked the division’s records by name, social security number, address and birth date and found no trace of online activity by Ms. H. on behalf of herself or her children.<sup>5</sup>

### **III. Discussion**

In order to qualify for a PFD, an applicant must file a timely application.<sup>6</sup> Applications for PFDs must be received or postmarked between January 1 and March 31 of the dividend year.<sup>7</sup> The only exceptions to the filing deadline allowed by law are for certain disabled people when their disability prevents timely filing,<sup>8</sup> for certain children when their parents or guardians do not timely apply on their behalf,<sup>9</sup> and for certain military members who were eligible for imminent danger or hostile fire pay during the application period.<sup>10</sup> Ms. H. has not alleged

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<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2.

<sup>5</sup> Exh. 8.

<sup>6</sup> AS 43.23.005(a)(1).

<sup>7</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>8</sup> 15 AAC 23.133(d), (e).

<sup>9</sup> 15 AAC 23.133(b), (c).

<sup>10</sup> AS 43.23.011(b), (c).

she was entitled to file for the 2007 PFD under any of these exceptions, so the March 31 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 a paper 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 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. The "reapplication" must be accompanied by a mailing receipt or a mailing return receipt showing the original application was timely.

The PFD Division has established that it does not have the applications of Ms. H. or her children, J. J. R. and S. C. R. Ms. H. did not obtain a mailing receipt or return receipt, and she does not have an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original applications to become delayed or lost.

The Department of Revenue is bound by its own regulations. Since the department does not have the applications – for whatever reason – the dividend can be paid only if Ms. H. produces one of the specified kinds of evidence, which she does not have. Even though her testimony was credible, the regulations do not permit any discretion in this situation and the 2007 PFD applications of Ms. H. and Joe and Stephanie cannot be considered timely.

**J. and S. R. may apply for their 2007 PFDs when each reaches the age of 18, so long as they do so before turning 20 years of age.<sup>11</sup> J. and S. will have to reapply on their own behalf during that short window between their 18<sup>th</sup> and 20<sup>th</sup> birthdays, so it would be wise for Ms. H. to retain copies of this decision so that J. and S. can attach it to their applications. This opportunity will be lost after they turn 20 years of age.**

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<sup>11</sup> 15 AAC 23.133(b)-(c).

**IV. Conclusion**

The 2007 PFD applications of L. H., J. R. and S. R. are denied because their applications on file with the division were submitted after the deadline and they did not meet the requirements of 15 AAC 23.103(g) or (h) with respect to their mailed applications. This decision does not affect their status as residents or their eligibility for 2008 and future dividends. Nor does it preclude J. and S. R. from applying for their 2007 dividends upon reaching majority or upon emancipation, but prior to their 20<sup>th</sup> birthdays, as provided by 15 AAC 23.133(b) and (c).

DATED this 12<sup>th</sup> day of February 2009.

By: Signed  
Kay L. Howard  
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 13th day of March, 2009.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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