

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

In the Matter of)	
)	
I. R. O.)	OAH No. 08-0430-PFD
<u>2007 Permanent Fund Dividend</u>)	Agency No. 2007-063-3005

DECISION AND ORDER

I. Introduction

I. R. O. applied for a 2007 permanent fund dividend (PFD) with a paper application dated October 5, 2007 and received by the Permanent Fund Dividend Division (Division) on October 8, 2007.¹ The Division denied her application on the basis of untimeliness.² On November 23, 2007, Ms. O. requested an informal appeal.³ On April 30, 2008, the Division denied Ms. O.'s informal appeal. Ms. O. filed her request for a formal hearing on July 30, 2008. The Division filed its formal hearing position statement on September 10, 2008.

The formal hearing in this matter was held September 22, 2008 before Administrative Law Judge James T. Stanley. Ms. O. testified by telephone. Kimberly Colby testified by telephone on behalf of the Division. The hearing was recorded. Exhibits 1 through 7 were admitted into evidence.

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

II. Facts

Ms. O. reached the age of eighteen years on March 22, 2007 and filed her own application for a PFD in 2007.⁴ Ms. O. has previously received PFD's when her mother completed and filed the application for the benefit of Ms. O.⁵

The Division denied Ms. O.'s October 5, 2007 application because it was filed after the March 31 deadline. Ms. O.'s informal appeal request was filed on November 23, 2007. Her informal appeal was denied by the Division on June 30, 2008 because her application was not

¹ Exhibit 1 (2007 Adult Applications).

² Exhibit 2.

³ Exhibit 3.

⁴ Ms. O.'s testimony.

⁵ Exhibit 5, p. 2.

filed on or before March 31, 2007.⁶ In her informal appeal request, Ms. O. conceded that her 2007 PFD application was filed after the deadline of March 31, 2007.⁷

Ms. O.'s formal appeal was filed July 28, 2008.⁸ In her formal appeal she explains that she believes that she is eligible for the 2007 PFD because "...I'm, eligible for 2007 dividend because it was my first time doing it by myself and I didn't know."⁹

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. O. is not within one of these categories, the March 31, 2007 filing deadline was absolute for her.

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 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.¹² Ms. O. has not provided a mailing receipt or return receipt.

⁶ Exhibit 4, p. 1 -2 (Informal Appeal Decision).

⁷ Exhibit 3, p. 2, which incorporates by reference Exhibit 2.

⁸ Exhibit 5, p. 1.

⁹ Exhibit 5, p. 2.

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.

¹² 15 AAC 23.103(h).

Ms. O. has not claimed that she mailed her application before the March 31, 2007 deadline. Rather, Ms. O. asks that the rule requiring filing by March 31 be relaxed because (1) her mother always filed for her when she was under the age of eighteen, and (2) she thought her mother had filed for her 2007 PFD.¹³ Once Ms. O. learned that her mother had not filed for her, she belatedly filed her application on October 5, 2007.¹⁴ The responsibility to obtain and timely file a PFD application rests with the applicant, Ms. O.¹⁵ The Department of Revenue is bound by its own regulations. The regulations do not permit any discretion in Ms. O.'s situation and her 2007 PFD application cannot be considered timely. Government officials can only pay a PFD to applicants 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, Ms. O. did not make that showing, and therefore she is not among the group of applicants to whom the officials can pay the PFD. Unfortunately for Ms. O., the Division is not allowed to make exceptions because it empathizes with the applicant.

IV. Conclusion

Because she applied too late, Ms. O. cannot receive a 2007 dividend. This decision does not affect her 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 Ms. O. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 9th day of January, 2009.

By: Signed
James T. Stanley
Administrative Law Judge

¹³ Exhibit 5, p. 2.

¹⁴ Exhibit 1.

¹⁵ 15 AAC 23.103(g).

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 the decision.

DATED this 6th 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.]