

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

IN THE MATTER OF)
)
 W. P.)
) Case No. OAH 08-0449-PFD
 2007 Permanent Fund Dividend)

DECISION

I. Introduction

W. P. applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. P. was not eligible, and it denied the application initially and at the informal appeal level. Mr. P. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on October 13, 2008. Mr. P. appeared by telephone. PFD Specialist Susan Pollard represented the division.

II. Facts

Mr. P. has been an Alaska resident since 1970 and there is no dispute that he continues to be an Alaska resident. In January of 2007 Mr. P. completed a MyAlaska registration. Mr. P. then attempted to file an online application, but he was not able to get into the PFD application system. Mr. P. testified that after he enrolled in MyAlaska, he tried to get back in to apply for a dividend, but became frustrated in his efforts. Ultimately, Mr. P. did not complete an application for a dividend, either online or using a traditional paper application, during the 2007 application period. On October 1, 2007, Mr. P. filed a paper application for the purpose of initiating this appeal process.

III. Discussion

At a formal hearing, the person requesting the hearing has the burden of proving that the division’s decision was incorrect.¹ Applications for permanent fund dividends must be filed between January 1 and March 31 of the dividend year.² The following portions of 15 AAC 23.103 apply to this case:

(g) It is an individual's responsibility to ensure that an application is timely delivered to the department.... An online application must be received electronically by the department by midnight Alaska Daylight Time on the last day of the application period. An applicant's proof of timely filing an online application is a copy of the computer-generated page

¹ 15 AAC 05.030(h).

² AS 43.23.011. Certain exceptions for military members on active duty, children, and disabled persons do not apply to this case.

containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process that shows that the online application was timely delivered to the department.

(h) 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;
- (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.

While he admits that he did not file an application either online or using a paper application, Mr. P. argues that “I just thought they should do the morally right thing and send me the money. I’ve been here for thirty-eight years, I’ve never done anything wrong, I’ve always behaved myself, I don’t see why we have to play these silly games.”

There are no provisions of law that allow the division, the commissioner or the administrative law judge to consider the character or circumstances of the applicant on a case-by-case basis. In order to qualify for dividends, applicants must show that they meet the eligibility requirements, including the requirement to file a timely application.

In his appeal, Mr. P. wrote, “I also remember helping an elderly friend who thought she had filed one year, but hadn’t, being allowed to file late one time only. I would hope that this would also apply in my case.”

Before the regulation was repealed on January 1, 2006, 15 AAC 23.103(h)(3) permitted someone who had actually mailed an application to reapply if the division did not have the application on file. While this regulation afforded a one-time opportunity for someone who had actually filed an application if, for example, the application was lost in the mail before it reached the division, this regulation would not apply to a case in which someone had not actually filed an application on time. Thus, even if it had not been repealed in 2006, this rule would not apply to this case.

IV. Conclusion

Although he has been a long-time resident of Alaska and meets most of the eligibility requirements, Mr. P. did not file a timely application for a 2007 dividend. The division was

correctly applying the law when it made the decision to deny the late-filed application. The division's decision to deny the application of W. P. for a 2007 permanent fund dividend is **AFFIRMED**.

DATED this 4th day of December, 2008.

By: Signed _____
DALE WHITNEY
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 7th day of January, 2008.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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