

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

In the Matter of:)	
)	
Y. S. Y. and O. S. Y.)	OAH No. 08-0451-PFD
)	Agency No. 2007-063-3881
<u>2007 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

Y. S. Y. and O. S. Y. seek to establish that they timely applied for 2007 Permanent Fund Dividends (PFD). The Permanent Fund Dividend Division (division), having no timely applications on file, denied their applications initially and at the informal appeal level. Mr. and Mrs. Y. requested a hearing, which was held on October 1, 2008. Mr. and Mrs. Y. appeared in person with a translator, Ms. A. Wendy Hughes represented the division by telephone at the hearing.

The division's denial is affirmed because the applications were filed late and did not qualify for any exception to the deadline.

II. Facts

Y. S. Y. and O. S. Y. are long-time Alaska residents and have received dividends in past years.¹ They own a store in Anchorage and make shipments to rural Alaska from the International Airport (airport) post office on a daily basis.² Mr. and Mrs. Y. recall that in February 2007, they prepared their 2007 PFD applications and, as in prior years, used their friend Mr. C. as a verifier. While Mr. C. was at the store, Mr. Y. took their applications and the day's mail to the airport post office and mailed all of his items from there.³ In the past, Mr. and Mrs. Y. had always used certified mail to send their PFD applications to Juneau, but since the division had always received their applications, they sent the 2007 applications by regular mail.

Mr. and Mrs. Y. did not receive their 2007 PFDs. After learning that the applications Mr. Y. mailed were not received by the division, they submitted another set of applications that were

¹ Exh. 3 at pgs. 2, 4.

² Unless otherwise noted, the factual findings are derived from the hearing testimony of Mr. and Mrs. Y.

³ The Ys' appeal letter stated that they mailed their 2007 PFD applications from the store, which is inconsistent with Mr. Y's testimony that he mailed them from the airport. Their interpreter, Ms. A., said at the hearing that she wrote the letter and had mistakenly translated their statement. She indicated that Mr. and Mrs. Y. had consistently told her that Mr. Y. mailed their applications from the post office.

received by the division on November 27, 2007.⁴ The division denied these subsequent applications because they were not filed before the March 31, 2007, filing deadline.⁵

Mr. and Mrs. Y. believe that their 2007 PFD applications were lost due to a mistake by the postal service. Their friend Mr. C. testified at the hearing that he observed Mr. Y. leave the store with the applications, bound for the airport post office. Mr. C. did not go to the airport with Mr. Y.

III. Discussion

In order to qualify for a PFD, an applicant must file a timely application.⁶ Applications for PFDs must be received or postmarked between January 1 and March 31 of the dividend year.⁷ The only exceptions to the filing deadline allowed by law are for certain disabled people when their disability prevents timely filing,⁸ for certain children when their parents or guardians do not timely apply on their behalf,⁹ and for certain military members who were eligible for imminent danger or hostile fire pay during the application period.¹⁰ Mr. and Mrs. Y. have not asserted that they were entitled to file for the 2007 PFD under any of these exceptions, so the March 31 deadline was absolute for them.

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

⁴ Exh. 1.

⁵ Exh. 2.

⁶ AS 43.23.005(a)(1).

⁷ AS 43.23.011(a); 15 AAC 23.103(a).

⁸ 15 AAC 23.133(d), (e).

⁹ 15 AAC 23.133(b), (c).

¹⁰ AS 43.23.011(b), (c).

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 2007 applications of Mr. and Mrs. Y. on file. On September 19, 2008, the division filed an affidavit from Kimberly Colby, PFD Specialist. Ms. Colby affied that she searched the division’s Dividend Application Information System (DAIS) for Mr. and Mrs. Y.’s 2007 applications by name and social security number but found no such applications.¹¹

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 Mr. and Mrs. Y. produce one of the specified kinds of evidence, which they do not have. Mr. Y. mailed their applications from the airport post office, but he did not obtain a mailing receipt or return receipt. Neither do they 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. Even though their testimony was credible, as was the testimony of Mr. C., the regulations do not permit any discretion in this situation and the 2007 PFD applications of Mr. and Mrs. Y. cannot be considered timely, however compelling their circumstances.

IV. Conclusion

The division’s denial of the applications of Y. S. Y. and O. S. Y. for the 2007 PFD is AFFIRMED. The Y.s’ 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 applications. This decision does not affect their status as residents or their eligibility for 2008 and future dividends.

DATED this 12th day of February 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ Exh. 6.

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.]