

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

IN THE MATTER OF)
)
 E. M.)
) Case No. OAH 08-0461-PFD
2007 Permanent Fund Dividend)

DECISION

I. Introduction

E. M. submitted a late application for a 2007 permanent fund dividend in order to initiate the appeal process regarding an application he alleges was timely filed. The Permanent Fund Dividend Division (“the division”) determined that Mr. M. was not eligible, and it denied the application initially and at the informal appeal level. Mr. M. requested a formal hearing by written correspondence.

Because Mr. M. has not presented the required kind of evidence to prove that the division’s decision was in error, the decision to deny Mr. M.’s application is affirmed.

II. Facts

Mr. M. asserts that he and his wife, R. M., each mailed applications for 2007 dividends in the same envelope. Mr. M.’s wife received a 2007 dividend by direct deposit into her bank account, but when Mr. M. did not receive a dividend he contacted the division in November 2007 and learned that the division had no application on file for him. The division has searched its database and found no evidence that Mr. M. filed or attempted to file an application during the 2007 application period.

Other than his written statement, Mr. M. has not presented any evidence to support his position. R. M. has not testified or provided any written support of Mr. M.’s assertions. As he chose a hearing by written correspondence only, Mr. M. has not provided any testimony in person or by telephone about his recollection of mailing a dividend application with his wife. Mr. M. has not provided a receipt of mailing or any other documentary evidence that he and his wife mailed applications for 2007 dividends.

The division asserts that, with Ms. M.’s permission, it examined its files for both Mr. M. and for Ms. M. The division determined that in the past the M.s had applied for dividends using paper applications mailed in the same envelope. According to the division, in 2007 Ms. M. filed an online application using an electronic signature, and that it therefore did not receive an application

envelope in the mail from either Mr. or Ms. M., nor did Ms. M. mail a signature page, having used an electronic signature. Mr. M. has not responded to this assertion.

III. Discussion

At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.¹ With certain exceptions that do not apply to this case, applications for permanent fund dividends must be filed between January 2 and March 31 of the dividend year.² It is the applicant's responsibility to ensure that an application is timely delivered to the department.³

This case is governed specifically by 15 AAC 23.103(h), which reads:

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;
 - (A) repealed 1/1/99;
 - (B) repealed 1/1/99;
- (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.

This regulation recognizes the possibility that there are many reasons why the division might not have an application on file for someone who actually filed or mailed one on time. The Postal Service can lose envelopes, division employees can lose documents, applicants can lose envelopes they thought they had mailed, thieves and vandals can steal or destroy documents, and computer systems can fail and result in lost data. In all of these situations, the law places the responsibility for proving that applications were timely filed on the applicant, regardless of the possibility of error on the division's part. Further, the division will accept only the specified kinds of evidence as proof that the applicant did in fact file an application on time.

Mr. M. has not presented a mailing receipt, a mailing return receipt, or a copy of a computer-generated page showing online filing. Mr. M. has also not presented any evidence that he

¹ 15 AAC 05.030(h).

² AS 43.23.011.

³ 15 AAC 23.103(g).

or Ms. M. mailed an envelope of any kind to the division during the 2007 application period. Though he asserts that he and his wife mailed applications to the division in a single envelope, Mr. M. has not presented any evidence to support the assertion, nor has he provided any evidence contradicting the division's assertion that Ms. M. filed only an online application for a 2007 dividend. Other than his written assertion, which has not been notarized, there is no evidence in the record that Mr. M. filed a dividend application during the 2007 dividend application period.

IV. Conclusion

Mr. M. has not met his burden of proving that the division's decision was in error. The decision of the Permanent Fund Dividend Division to deny the application of E. M. for a 2007 permanent fund dividend is **AFFIRMED**.

DATED this 26th day of January, 2009.

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 23rd day of February, 2009.

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

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