

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

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|-------------------------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| D. P. A. |) | OAH No. 08-0462-PFD |
| |) | Agency No. 2008-001-5607 |
| <u>2007 Permanent Fund Dividend</u> |) | |

DECISION AND ORDER

I. Introduction

D. P. A. seeks to establish that he timely applied for a 2007 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application in its files, denied his application initially and at the informal appeal level. Mr. A. requested a formal hearing. Pursuant to a notice sent to both parties on September 4, 2008, the hearing convened at 11:00 a.m. on October 6, 2008. Mr. A. did not appear at the hearing and he could not be reached at any of the telephone numbers he had provided in his appeal documents. The hearing went forward without him.

Mr. A. subsequently wrote the Office of Administrative hearings and explained that he had slept through his hearing. A new hearing was scheduled for October 29, 2008. Mr. A. appeared in person at the second hearing.

At the second hearing, the administrative law judge (ALJ) observed signs that Mr. A. might have a disability,¹ although Mr. A. indicated that he did not believe he had one. The ALJ explained orally and in a written order that Mr. A. or someone assisting him would have until November 17, 2008 to submit a statement from a licensed health care provider regarding disability. Nothing further was submitted.

The division's denial is affirmed because the only application on file was submitted late, he has not provided the proof of timely mailing or delivery required by law, and it is not possible to find that his late application came about because of a disability. Even if Mr. A. is correct in

¹ Mr. A. was not able to provide basic information about his case without leading questions. He seemed uncertain about where he had lived in 2007. In two answers, he indicated that he did not get his 2007 dividend but recently received his 2003 dividend. It turned out that he meant to say he recently received his 2008 dividend. Although he had mentioned 2003 twice, once in the same sentence with 2007, he did not seem to notice anything odd about 2003 coming after 2007.

asserting that he mailed an earlier application and it became lost, Department of Revenue regulations provide no discretion to grant a dividend to him.

II. Facts

D. A. is a young man, now about to turn 21, who has lived in Nome, Kotzebue, and Anchorage in the past and has qualified for and received Permanent Fund Dividends prior to 2007.² Apart from the question of timeliness of his application, he appears to have met all eligibility requirements for the 2007 dividend.³

Mr. A. has not submitted a statement from a health care provider regarding disability. There is insufficient evidence to find that Mr. A. is mentally or physically disabled, and Mr. A. denies any disability. Mr. A. was not serving on active duty as a member of the armed forces of the United States in 2007.⁴

Mr. A. recalls mailing a paper 2007 PFD application sometime in 2007 but does not recall when he did so.⁵ There is no evidence that he used a certified or return receipt service. Mr. A. recalls that his father, C. P., helped him with the application.⁶

On November 26, 2007, after failing to receive a dividend, Mr. A. inquired about his application.⁷ He was told that there was none on record. Mr. A. then submitted a new, late application, which the division received on December 26, 2007.⁸

The division denied Mr. A.'s December application because it was not filed by the March 31, 2007 deadline and he did not qualify for any exception to the filing deadline. The division checked its records by social security number and name, and found that for 2007 the only application it had for Mr. A. was the December application.⁹ The division also checked under the name of C. P. to see if an A. application might have been mistakenly attached to that application, but found that Mr. P. also had not filed during the 2007 application period.¹⁰

² See Exhibit 8, p. 1 (Affidavit of Peter Scott); Exhibits 1, 3, 4 (records showing prior addresses).

³ See Exhibit 1 (2007 Adult Application).

⁴ *Id.*, p. 1.

⁵ Testimony of Mr. A.

⁶ Testimony of Mr. A.

⁷ Exhibit 7 (record of telephone call). On that occasion, Mr. A. said he could remember completing his application but could not remember how it was mailed.

⁸ Exhibit 1.

⁹ Testimony of Peter Scott.

¹⁰ *Id.*

III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.¹¹ The only exceptions to the filing deadline allowed by law are for certain disabled people when their disability prevents 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.¹² Since Mr. A. is not in one of these categories, the March 31 deadline was absolute for him.

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 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 the original application was timely.¹³

Mr. A. has not provided a mailing receipt or return receipt, so his only remedy would be to get an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original application to become delayed or lost. Mr. A. has not provided a statement from the Postal Service describing such a circumstance.

It seems likely that Mr. A. filled out an application during the application period; it is less certain that Mr. A. ever mailed his application. Assuming he did, however, the Department of Revenue remains bound by its own regulations. Since the department does not have the application—for whatever reason, whether it be an error by the sender, and error by the Postal

¹¹ AS 43.23.011(a); 15 AAC 23.103(a).

¹² AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

¹³ 15 AAC 23.103(h).

Service, an error by the PFD Division, or some occurrence beyond the control of any of them¹⁴— the dividend can be paid only if Mr. A. produces one of the specified kinds of evidence, which he does not have. The regulations do not permit any discretion in this situation and Mr. A.'s 2007 PFD application cannot be considered timely.

Government officials can only pay a dividend to people who qualify and who either make a timely application or can show, through a limited range of indisputable means, that they correctly took the steps to make a timely application. For 2007, Mr. A. did not make that showing, and therefore he does not fall among those to whom the officials can make the payment.

IV. Conclusion

Because Mr. A.'s only application on file was submitted after the deadline and he did not meet any of the exceptions to the filing deadline, his application is properly denied. This decision does not affect his status as a resident or his eligibility for 2008 and future dividends.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of D. P. A. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 20th day of November, 2008.

By: *Signed* _____
Christopher Kennedy
Administrative Law Judge

¹⁴ Mr. A. could have, in effect, purchased insurance against such an event by sending his application by certified mail. He apparently chose not to do so.

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 10th day of December, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Commissioner's Delegate
Title

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