

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

IN THE MATTER OF)	
)	
A. M.)	OAH No. 08-0468-PFD
)	Agency No. 2007-063-3374
<u>2007 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

A. M. applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. M. was not eligible because he did not present the evidence required by regulation to prove he had timely filed his application. The division denied his application initially and at the informal appeal level. Mr. M. requested a formal hearing which was held October 9, 2008. The parties participated telephonically. The division’s denial is affirmed because Mr. M. did not submit the form of evidence required by regulation to establish that he had timely filed his application nor does he qualify for any exception to the filing deadline.

II. Facts

Mr. M. is a longtime Alaska resident, and there is no dispute that, with the possible exception of timely filing, he would otherwise be eligible for a 2007 PFD. Mr. M.’s wife, B. M., has always prepared their PFD applications. It is her practice to prepare and mail their applications in January or February of the dividend year.¹ Ms. M. underwent a surgical procedure January 17, 2007.² She was under a physician’s care and taking narcotics post-surgery. In February 2007, Ms. M. decided to try to file their applications on line. She recalls filling out the form but she does not have a copy of the computer generated confirmation number that an applicant receives after successfully completing the online filing process.³ When neither Mr. M. nor Ms. M. received a 2007 PFD in October 2007 they contacted the division and were informed that the division had no

¹ Exhibit 3 at 4, 5 (Affidavit of B. F. M.).

² Exhibit 3 at 4, 5 (Affidavit of B. F. M.); Exhibit 5 at 3 (August 8, 2008 from James M. Eule, M.D.).

³ “I recall specifically that I completed the applications, as directed, and submitted the applications, as directed, on-line.” Exhibit 3 at 4 (Affidavit of B. F. M.).

2007 PFD application on file for either of them.⁴ The M.'s then filed paper applications which were received by the division on October 26, 2007 and denied as untimely.⁵

The division subsequently approved Ms. M.'s application when it received a licensed health care provider's statement explaining that the narcotic pain medication she was taking after her surgery could have decreased her mental status and resulted in her either misfiling or inappropriately filing her PFD application.⁶ The division denied Mr. M.'s application. The division determined that Mr. M. could not rely upon Ms. M.'s disability because it was Mr. M.'s responsibility to ensure that his application was timely filed. It is only the denial of Mr. M.'s 2007 PFD application which is the subject of this appeal.

III. Discussion

The division is correct. It is an applicant's responsibility to ensure that their application is timely delivered to the division.⁷ The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.⁸ A paper application must be postmarked or delivered to the division during the application period to be considered timely filed.⁹ There are only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services and eligible for hostile fire or imminent danger pay.¹⁰ At the time in question, Mr. M. has not alleged he was in the armed services nor has he submitted evidence that he was disabled as defined by AS 43.23.095(2), so the March 31 deadline was absolute for him.

The regulation addressing applications received after the deadline is found at 15 AAC 23.103. Under 15 AAC 23.103(h), if an applicant claims his or her application was timely filed but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year. When, as here an applicant claims to have timely filed on line, the applicable regulation provides that a "reapplication" will be considered timely filed if the applicant can provide "a copy of the computer generated page containing the permanent fund dividend

⁴ See Exhibit 7, Affidavit of S. Edwards; Exhibit 8. The division conducted a search of its data processing systems and did confirm that the M.s' registered for electronic signatures through myAlaska but did not have any applicant information associated with the PFD application process.

⁵ Exhibits 1, 2.

⁶ Exhibit 5 at 3 (August 8, 2008 from James M. Eule, M.D.).

⁷ 15 AAC 23.103(g).

⁸ AS 43.23.011(a).

⁹ 15 AAC 103(a).

¹⁰ AS 43.23.011(b), (c). Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline. See AS 43.23.055(3), (7).

confirmation number received by the applicant after completing the online filing process.”¹¹ Mr. M. does not have the required confirmation page. Without the required confirmation, the regulation does not permit the division or the administrative law judge to grant Mr. M.’s application.

There is an additional regulation which merits discussion in Mr. M.’s appeal, 15 AAC 23.133. It is this regulation which permitted the division to accept Ms. M.’s application upon receipt of a provider’s statement that she was disabled during the application period in question. Mr. M. reasons that because he has always depended upon his wife to file his application and because she was disabled during the application period in question, then his application should also be accepted for filing under the exception found at 15 AAC 23.133(d). However, 15 AAC 23.133(d) does not permit anyone other than the disabled individual to submit an application for a prior year dividend.¹²

The Department of Revenue is bound by its own regulations. The regulations leave neither the division nor the administrative law judge any discretion in this matter.

IV. Conclusion

Because Mr. M.’s application on file was submitted after the March 31 deadline and because he did not meet the requirements of 15 AAC 23.103(h) with respect to his 2007 PFD application, he is not eligible for a 2007 PFD. This decision does not affect his status as 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 A. M. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 15th day of December, 2008.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹¹ 15 AAC 23.103(h)(4).

¹² 15 AAC 23.133(d). (“If an individual was disabled, as defined in AS 43.23.095, during the application period of the prior year and, as a result of the disability, did not timely file an application, *that* individual ... may submit an application for the prior year dividend. . .”).

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 12th day of January, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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