

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

IN THE MATTER OF )  
 )  
 M. O. )  
 ) Case No. OAH 08-0490-PFD  
 )  
2007 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

M. O. submitted a late-filed application for a 2007 permanent fund dividend for the purpose of initiating an appeal regarding an application she alleges was mailed during the application period. The Permanent Fund Dividend Division (“the division”) determined that Ms. O. was not eligible, and it denied the application initially and at the informal appeal level. Ms. O. requested a formal hearing. A hearing was held on October 20, 2008. Ms. O. appeared by telephone. PFD Specialist Peter Scott represented the division by telephone.

Although Ms. O. may have actually mailed a timely application for a 2007 dividend, she does not have one of the required forms of proof to document timely mailing. Therefore, the division’s decision to deny the application was correct and must be affirmed.

**II. Facts**

Ms. O. was born and raised in No Name City, and has received dividends since the PFD program began. The division admits there are no issues in this case regarding Ms. O.’s status as an Alaska resident. The only eligibility issue in this case concerns Ms. O.’s filing of a timely application.

Ms. O. testified that she clearly remembers filling out an application for a 2007 dividend during the application period and mailing it by dropping the application in the mailbox at the Safeway post office near her home. Ms. O. did not use certified mail or obtain a mailing receipt from the post office.

The division has searched its files and databases and has been unable to recover evidence that it received an application for Ms. O. until she filed an application in December, 2007, to begin this appeal. PFD Specialist Scott testified on the record and described the division’s method of storing information and how he searched without success for evidence of a timely application from Ms. O. During the hearing, Mr. Scott searched the division’s database for a person Ms. O. was aware with the same or a similar name. Mr. Scott did find a file for a person whose name differed

from Ms. O.'s by only one letter. There was, however, no information in that person's files that would indicate that Ms. O.'s timely application might have been mistakenly misfiled.

While Ms. O.'s testimony was credible, it cannot be ascertained with certainty whether she might have forgotten to file an application, whether the application was lost by the postal service, or whether the division might have lost her application after receiving it.

### **III. Discussion**

In order to qualify for a permanent fund dividend, a person must apply.<sup>1</sup> 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.<sup>2</sup> It is the applicant's responsibility to ensure that an application is timely delivered to the department.<sup>3</sup>

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 part of the division or the postal service. Further, the division will accept only the specified kinds of evidence as proof that the applicant did in fact file an application on time.

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<sup>1</sup> AS 43.23.005(a)(1).

<sup>2</sup> AS 43.23.011.

Ms. O. has a long history of filing timely applications by mail and there is no reason to doubt her testimony that she did so in 2007. However, because she did not obtain a mailing receipt, Ms. O. cannot provide the kind of proof of mailing that is required for cases in which a person alleges timely mailing but the division has no application on file for the person.

**IV. Conclusion**

Because Ms. O. has not provided the required proof of timely filing, the division’s decision to deny her application for a 2007 permanent fund dividend is AFFIRMED.

DATED this 13th 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 10<sup>th</sup> 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.]