

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

IN THE MATTER OF)	OAH No. 08-0494-PFD
F., J. & M. S.)	
)	
<u>2007 Permanent Fund Dividends</u>)	

DECISION & ORDER

I. Introduction

F., J. and M. S. filed re-applications for 2007 permanent fund dividends (PFDs) in December of 2007. The Permanent Fund Dividend Division (Division) denied the re-applications initially and at the informal appeal level. The S. requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley heard the appeal.

The Division correctly denied F., J. and M. S.' 2007 PFD re-applications because they did not provide required documentation to show timely filing of their original applications.

II. Facts

F., J. and M. S. filed paper 2007 PFD re-applications on December 11, 2007.¹ F., J. and M. S. dated their signatures on these re-applications January 10, 2007.² In their request for a formal hearing, the S. asserted that every year they have timely filed original PFD applications, and in 2007 they mailed them from there home around January 10, 2007.³ The S. explained that their original applications were all mailed in the same envelope.⁴ In their request for a formal hearing, the S. explained that they are not certain where their original applications were lost.⁵ The S. did not provide the Division with a mailing receipt or return receipt showing that they timely filed original 2007 PFD applications.⁶

¹ Ex. 1.

² Ex. 1.

³ Ex.5.

⁴ Ex.5.

⁵ Ex.5.

⁶ Ex. 1- 7.

The Division filed an affidavit explaining the methods used to search the Division's electronic database for evidence that F., J. and M. S. had timely filed original 2007 PFD applications.⁷

Based on the evidence in the record, I conclude that it is more likely than not that the S. claimed to have timely mailed original 2007 PFD applications, but the Division does not have timely filed original 2007 PFD applications from F., J. and M. S. on file, and the S. did not provide a mailing receipt or return receipt or its substantial equivalent showing that they timely filed original 2007 PFD applications.⁸

III. Discussion

The deadline for PFD applications is governed by 15 AAC 23.103. In order to qualify for a permanent fund dividend, a person must file an application.⁹ According to 15 AAC 23.103(g), applications must be filed between January 2 and March 31 of the dividend year.¹⁰

The exceptions to the rule requiring timely filing in 15 AAC 23.133 are limited to disabled people, children whose their parents did not file for them, and children or disabled people who are wards of state social service agencies. Also, AS 43.23.011 contains an exception for certain military personnel who were in combat situations during the application period. The S. do not meet the requirements of any of these exceptions.

15 AAC 23.103(h) covers applications that were timely filed, when the Division has no record of having received them. Because the Division does not have the S.' original 2007 PFD applications on file, the Division must look to 15 AAC 23.103(h) to determine whether it can accept re-applications from the S..

15 AAC 23.103(h) in its current form is a regulation that has only been in effect since January 1, 2006. The former version of 15 AAC 23.103(h) provided a more generous procedure to pay applicants who mailed their application if the Division does not a record of having received the application. Under the old regulation, Alaskans in this situation were permitted to reapply (no later than December 31 of the dividend year) with one of three "forms of evidence that an application was timely filed." These were:

- (1) a mailing receipt;

⁷ Ex.7.

⁸ Ex. 1, 5 & 7.

⁹ AS 43.23.005(a)(1).

¹⁰ AS 43.23.011(a). Certain exceptions to this apply to disabled Alaskans and some military personnel in hostile fire or imminent danger duty during the application period.

(2) a mailing return receipt documenting delivery to the department or a notification of receipt issued by the department; or

(3) a notarized affidavit or other documentation showing that an individual or the individual's sponsor timely filed

Effective the beginning of the 2006 dividend year, however, the Department of Revenue modified this regulation by repealing item 3. This suggests that the department intended to exclude from eligibility applicants whose lost applications were mailed if the only evidence of mailing they could provide was "a notarized affidavit or other documentation." Item 2 was also rewritten to read: "a mailing return receipt documenting delivery to the department *or other evidence of receipt by the department; . . .*" The reason the Division chose to change this part of the regulation may have been that the Division has stopped mailing out batch cards, or notifications of receipt, to applicants. When it made this change, however, the Division broadened the language describing the type of allowable evidence of receipt, but this new language appears to apply only to applications that delivered to the Division directly by hand, or through some private shipping service, not applications that were mailed. After January 1 of 2006, a straightforward reading of the department's regulations indicates that applicants who use the Postal Service may receive a PFD when a mailed application is lost only if they have a Postal Service mailing receipt or return receipt or its substantial equivalent.¹¹ This new regulation applies to the Division's authority to accept F., J. and M. S.' 2007 PFD re-filed applications.

The laws regarding permanent fund dividends do not allow the administrative law judge to make exceptions to the rules regarding filing of applications, even in particularly compelling cases. When the Division does not have a person's application on file, the person must produce specific types of documentation such as a mailing receipt or, in the case of an electronically filed application, a confirmation number, to prove that a timely application was made.¹² The Division does not have timely filed 2007 PFD applications for F., J. and M. S. on file, and they have not provided the required documentation to show timely filings. Having reached the finding that the S. did not meet the timely filing requirements of 15 AAC 23.103, the only possible result of this case is to conclude that F., J. and M. S.' 2007 PFD applications must be denied.

¹¹ In a recent PFD appeal, the Commissioner of Revenue determined that a third-party's contemporaneously executed documentation of a mailing was the substantial equivalent of a mailing receipt, and should be accepted as a mailing receipt, for the purpose of allowing a re-filed PFD application under 15 AAC 23.133(h).

¹² 15 AAC 23.103(h)(4).

V. Order

IT IS HEREBY ORDERED that the applications of F., J. and M. S. for 2007 permanent fund dividends be DENIED.

DATED this 24th day of November, 2008.

By: Signed
Mark T. Handley
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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 31st day of December, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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