

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

In the Matter of	)	
	)	
J. M.	)	OAH No. 08-0496-PFD
	)	Agency No. 2007-063-1665
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

J. M. appeals the Permanent Fund Division’s determination that he was ineligible for a 2007 PFD because he did not timely file an application. Mr. M. requested a formal hearing, which was held on October 21, 2008. PFD Specialist Peter Scott represented the division. Mr. M. did not participate.<sup>1</sup> Following the hearing, the record was left open until October 31, 2008, to provide Mr. M. with an opportunity to show reasonable cause for his failure to participate.<sup>2</sup> The record closed without further participation by Mr. M. The division’s denial is affirmed because the application was filed late and did not qualify for any exception to the deadline.

**II. Facts**

Mr. M. dated his 2007 PFD application January 10, 2006.<sup>3</sup> The January 2006 date must be in error because the 2007 PFD application would not have been available in January 2006. It was delivered to the division in an envelope postmarked May 7, 2007.<sup>4</sup> Mr. M. contends that he placed his 2007 PFD application in an envelope without postage in his employer’s mail from his workplace in Prudhoe Bay before the March 31, 2007 filing deadline.<sup>5</sup> He did not place proper postage on the envelope because he understood that his employer would provide postage.<sup>6</sup> He discovered that his employer did not provide postage when he found the letter in his Fairbanks Post Office Box after March 31, 2007.<sup>7</sup>

**III. Discussion**

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<sup>1</sup> Mr. M. was called at his phone number of record and a voice mail message was left.  
<sup>2</sup> “If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.” 15 AAC 05.030(j).  
<sup>3</sup> Exhibit 1 at 1.  
<sup>4</sup> Exhibit 1 at 3.  
<sup>5</sup> Exhibit 3 at 2; Exhibit 5 at 2.  
<sup>6</sup> *Id.*  
<sup>7</sup> Exhibit 3 at 2.

It is an applicant's responsibility to ensure that the application is timely delivered to the division.<sup>8</sup> The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.<sup>9</sup> Mr. M.'s 2007 PFD application was postmarked May 7, 2007.

A mailed application must be postmarked during the application period to be considered timely filed.<sup>10</sup> The legislature provided very few exceptions to this bright line rule.<sup>11</sup> There is a provision that permits an individual to apply for a PFD after the application deadline if individual is a member of the armed services and eligible for hostile fire or imminent danger pay.<sup>12</sup> There are also provisions that effectively allow certain minors and disabled people to apply after the deadline.<sup>13</sup> At the time in question, Mr. M. has not alleged he was entitled to file under one of these exceptions, so the March 31 deadline was absolute for him.

Mr. M. argues that his application was "sent in a timely manner"<sup>14</sup> but was received by the division after the March 31, 2007 filing deadline. The regulation addressing applications received after the deadline is found at 15 AAC 23.103. 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. The applicable regulation provides that a "reapplication" will be considered timely filed if there is a mailing receipt or a mailing return receipt showing the original application was mailed between January 1 and March 31 of the dividend year.<sup>15</sup> Here, Mr. M. does not have a mailing receipt or return receipt because he mailed the application through his employer. However, without such a receipt, the regulation does not permit the division or the administrative law judge to grant Mr. M.'s application.

There is another subsection of 15 AAC 23.103, that deals with the problem of applications postmarked after the deadline. It reads:

(g) 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 a paper application postmarked after the application period, unless the individual provides the

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<sup>8</sup> 15 AAC 23.103(g).

<sup>9</sup> AS 43.23.011(a).

<sup>10</sup> 15 AAC 103(a).

<sup>11</sup> AS 43.23.011(b), (c); AS 43.23.055(3), (7).

<sup>12</sup> AS 43.23.011(b), (c).

<sup>13</sup> 15 AAC 23.133.

<sup>14</sup> Exhibit 5 at 2.

<sup>15</sup> 15 AAC 23.103(h).

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....

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. In Mr. M.'s situation, there was one way around the late postmark: he would have had to get an official statement from the Postal Service showing that incorrect handling or delay by the Postal Service caused the late postmark. This might be, for example, a statement that the mailbox was incorrectly labeled or that the pickup from the employer was not made as scheduled on March 31. Without such an official statement, the Department of Revenue has no discretion in this matter. It cannot consider the Mr. M.'s application to be timely.

#### **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(g) or 15 AAC 23.103(h) with respect to his application dated January 200[7], he is not eligible for a 2007 PFD. 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 J. M. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 13th day of January, 2009.

By: Signed  
Rebecca L. Pauli  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of February, 2009.

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

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