

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

In the Matter of	)	
	)	
P. M. H.	)	
	)	
<u>2007 Permanent Fund Dividend</u>	)	OAH No. 08-0509-PFD Agency No. 2008-025-2455

**DECISION AND ORDER**

**I. Introduction**

P. M. H. applied for a 2007 permanent fund dividend (PFD) with a paper application dated December 30, 2007 and received by the Permanent Fund Dividend Division (Division) on January 7, 2008.<sup>1</sup> On March 17, 2008, the Division denied his application on the basis of untimeliness.<sup>2</sup> On April 23, 2008, Mr. H. requested an informal appeal.<sup>3</sup> On August 8, 2008, the Division denied Mr. H.'s informal appeal.<sup>4</sup> Mr. H. filed his request for a formal hearing on September 8, 2008.<sup>5</sup> The Division filed its formal hearing position statement on October 13, 2008.

The formal hearing in this matter was held October 23, 2008 before Administrative Law Judge James T. Stanley. Mr. H. appeared and testified in person. Peter Scott testified by telephone on behalf of the Division. The hearing was recorded. Exhibits 1 through 7 were admitted into evidence.

The Division's denial is AFFIRMED because Mr. H.'s application was filed late and he did not qualify for any exception to the filing deadline.

**II. Facts**

Mr. H. has resided in Alaska since 1976. Except for the year 2007, he has received a PFD every year since the inception of the PFD program.<sup>6</sup> In 2007, he was not disabled or serving in the military.<sup>7</sup>

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<sup>1</sup> Exhibit 1 (2007 Adult Application).

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 1, p. 5.

<sup>7</sup> Hearing testimony of Mr. H.

The Division denied Mr. H.'s December 30, 2007 application because it was filed after the March 31 deadline.<sup>8</sup> In his informal appeal request, Mr. H. remains firm in his conviction that he timely mailed the application for the 2007 PFD.<sup>9</sup> In his formal appeal he reiterates his strong belief that he timely mailed the 2007 PFD application and raises the question of "(H)ow would one know if no receipt was sent out?" At the hearing, Mr. H. credibly and forcefully argued that: he specifically recalls timely mailing the 2007 application; he should receive the benefit of the doubt in this situation. Other than his personal recollection, Mr. H. was not able to produce any documentary evidence of timely mailing his 2007 PFD application. The Division established that the only 2007 PFD application from Mr. H. in its files was the application received on January 7, 2008.<sup>10</sup>

### **III. Discussion**

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>11</sup> The only exceptions to the filing deadline allowed by law are for certain disabled people who demonstrate that their disability prevented 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.<sup>12</sup> Because Mr. H. is not within one of these categories, the March 31, 2007 filing deadline was absolute for him.

Whether an application is considered timely delivered to the Division is established by a regulation, 15 AAC 23.103(g), the relevant portion of which reads as follows:

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.

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<sup>8</sup> Exhibit 2.

<sup>9</sup> Exhibit 1, p. 6.

<sup>10</sup> Exhibit 6 (affidavit of Peter Scott).

<sup>11</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>12</sup> AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

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 that the original application was timely mailed.<sup>13</sup> Mr. H. has not provided a mailing receipt or return receipt.

The responsibility to obtain and timely file a PFD application rests with the applicant, Mr. H.<sup>14</sup> The Department of Revenue is bound by its own regulations, and the applicable regulations do not permit any discretion in Mr. H.’s situation; his 2007 PFD application cannot be considered timely. Government officials can only pay a PFD to applicants who qualify and who either make a timely application or can show that they correctly took the steps to make a timely application. For the PFD payable in 2007, Mr. H. did not make that showing, and therefore he is not among the group of applicants to whom the officials can pay the PFD. Unfortunately for Mr. H., the Division is not allowed to make exceptions simply because it empathizes with the applicant.

#### **IV. Conclusion**

Because he applied too late, Mr. H. cannot receive a 2007 dividend. This decision does not affect his ability to qualify for dividends in 2008 or future years.

#### **V. Order**

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

DATED this 29<sup>th</sup> day of January, 2009.

By: Signed  
James T. Stanley  
Administrative Law Judge

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<sup>13</sup> 15 AAC 23.103(h).

<sup>14</sup> 15 AAC 23.103(g).

## 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 27<sup>th</sup> day of February, 2009.

By: Signed  
Signature  
James T. Stanley  
Name  
Administrative Law Judge  
Title

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