

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

IN THE MATTER OF)
)
 D. T.)
)
2007 Permanent Fund Dividend)

Case No. OAH 08-0511-PFD
Agency Case no. 2007-063-0748

DECISION

I. Introduction

D. T. submitted an application for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. T. was not eligible, and it denied the application initially and at the informal appeal level. Ms. T. requested a formal hearing. A hearing was held on October 23, 2008. Ms. T. appeared by telephone. PFD specialist Peter Scott represented the PFD Division by telephone. Because Ms. T. did not apply during the application period, the division was correctly applying the law when it made the decision to deny the application. The division’s decision is affirmed.

II. Facts

Ms. T. lives in No Name City and is a companion and caregiver for N. S. Near the end of the 2007 application period, Mr. S. suffered a very serious medical emergency that required him to go by ambulance from Nameless City to the hospital in Fairbanks, with Ms. T. accompanying him.

Ms. T. and Mr. S. signed their applications on March 29, 2007. They put their applications together in the same envelope, and gave the envelope to someone who was going to Nameless City to mail it. This person apparently did not mail the envelope before the end of the application period. The envelope was postmarked on April 2, 2007, and the division received it on April 5, 2007.

The division determined that Mr. S. was disabled during the application period and his disability prevented him from applying on time; the division therefore granted Mr. S.’s application. Ms. T. was not disabled, but she testified that she has arthritis in her knees that makes it difficult for her to work. Nevertheless, Ms. T. lives alone in a remote area, heats with wood, packs her own water, does her own hunting and relies on subsistence for survival. Ms. T. testified that she has many good uses for the dividend.

III. Discussion

The first requirement for PFD eligibility is that individuals actually apply to the Department of Revenue.¹ Applications must be filed during the period that begins January 2 and ends March 31 of the dividend year.² The legislature has allowed exceptions to the filing deadline only for certain military personnel in combat situations,³ for certain children when their parents or guardians failed to apply for them,⁴ and for certain disabled individuals.⁵

According to 15 Alaska Administrative Code 23.103(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 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.

During the application period, Ms. T. was caring for a disabled person. While she suffers from some arthritis, Ms. T. has not alleged that she was disabled, and it does not appear that a disability prevented Ms. T. from filing an application on time. Because Ms. T. was not disabled, is an adult, and was not in the military, she does not fall into any of the exceptions to the requirement for timely filing.

In spite of the circumstances and Ms. T.'s need for the money, in denying her application the division was correctly following the law that states, "the department will deny a paper application postmarked after the application period." Unfortunately, there is no provision of law that allows the division or the commissioner to grant a PFD application in this situation.

¹ AS 43.23.005(a)(1).

² AS 43.23.011.

³ AS 43.23.011(b)-(c).

⁴ AS 43.23.055(3).

⁵ AS 43.23.055(8).

IV. Conclusion

Because Ms. T.'s application was postmarked after the end of the 2007 application period and Ms. T. was not disabled, a minor, or in the military, the division was correctly applying the law when it made the decision to deny Ms. T.'s application. The decision of the Permanent Fund Dividend Division to deny the application of D. T. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 4th day of February, 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 4th day of March, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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