

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

IN THE MATTER OF	)	
	)	
B. C. P.	)	OAH No. 08-0512-PFD
	)	Agency No. 2007-063-3895
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

B. C. P. applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. P. was not eligible because he did not present the evidence required by regulation to prove he had timely filed his application. The division denied his application initially and at the informal appeal level. Mr. P. requested a formal hearing which was held October 23, 2008. Mr. P. appeared in person; PFD Specialist Peter Scott participated telephonically and represented the division. The division's denial is affirmed because the applications were filed late and did not qualify for any exception to the deadline.

**II. Facts**

Mr. P. is a longtime Alaska resident, and there is no dispute that, with the possible exception of timely filing, he would otherwise be eligible for a 2007 PFD. Mr. P. has received a PFD every year since the program's inception until the denial of his 2007 PFD. In March 2007, Mr. P. mailed his 2007 PFD as he has done every year. When Mr. P. did not receive a 2007 PFD, he reapplied.<sup>1</sup> His reapplication was received by the division on November 28, 2007. The division conducted a search of its 2007 records and the only application found for Mr. P. was the one filed in November.<sup>2</sup> Mr. P. does not have a certificate of mailing.

**III. Discussion**

It is an applicant's responsibility to ensure that their application is timely delivered to the division.<sup>3</sup> The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.<sup>4</sup> A mailed application must be postmarked during the application period to be considered timely filed.<sup>5</sup> There are only two exceptions. To be eligible for either of them, the

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<sup>1</sup> P. Testimony; Exhibit 1.

<sup>2</sup> Exhibit 6.

<sup>3</sup> 15 AAC 23.103(g).

<sup>4</sup> AS 43.23.011(a).

<sup>5</sup> 15 AAC 103(a).

applicant has to be a member of the armed services and eligible for hostile fire or imminent danger pay.<sup>6</sup> At the time in question, Mr. P. has not alleged he was in the armed services nor has he submitted evidence that he was disabled as defined by AS 43.23.095(2), so the March 31 deadline was absolute for him.

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>7</sup> Here, Mr. P. does not have a mailing receipt or return receipt. Mr. P. testified credibly and it is more probable than not that he did timely file his 2007 PFD application. However, without such a receipt, the regulation does not permit the division or the administrative law judge to grant Mr. P.’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 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. P.’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 that box was not made as scheduled on March 31. Without such an official

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<sup>6</sup> AS 43.23.011(b), (c). Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline. See AS 43.23.055(3), (7).

<sup>7</sup> 15 AAC 23.103(h).

statement, the Department of Revenue has no discretion in this matter. It cannot consider the Mr. P.'s application to be timely.

**IV. Conclusion**

Because Mr. P.'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 January 2007 application, he is not eligible for a 2007 PFD. This decision does not affect his status as 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 B. C. P. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 24th day of October, 2008.

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21<sup>st</sup> day of November, 2008.

By: *Signed*  
Christopher Kennedy  
Name  
Deputy Chief ALJ  
Title

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