

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

In the Matter of	)	
	)	
A. W. G.	)	
C. A. G.	)	
W. R. G., SR.	)	OAH No. 08-0516-PFD
	)	Agency No. 2007-063-3821
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

W., C., and A. G. seek to establish that they timely applied for a 2007 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application in its files, denied their applications initially and at the informal appeal level. The G.s requested a formal hearing. The hearing convened on October 28, 2008, with all members of the G. family participating in person and PFD Specialist Peter Scott participating by telephone. W., C., and A. G. testified on their own behalf; Peter Scott gave testimony on behalf of the PFD Division.

The division's denial is affirmed because the only applications on file were submitted late and the G.s do not have the proof of timely mailing or delivery required by law. Although it is probable that the G.s mailed earlier applications before the filing deadline and that those applications simply became lost, Department of Revenue regulations provide no discretion to grant a dividend in this unfortunate situation.

**II. Facts**

W. R. G., Sr. and C. A. G. are longtime Alaskans in their mid-sixties who, apart from 2007, have qualified for and received PFDs since the inception of the program.<sup>1</sup> A. W. G. is their adult son; he likewise has received dividends annually since the program began, with the exception of a short period of residence in Seattle that is now long past.<sup>2</sup> Apart from the question of timeliness of their applications, there is no dispute that they have met all eligibility requirements for the 2007 dividend.<sup>3</sup>

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<sup>1</sup> Testimony of Mr. and Mrs. G.; Exhibit 1, pp. 3, 5 (2007 Adult Applications).

<sup>2</sup> Testimony of A. G..

<sup>3</sup> See Exhibit 1 (2007 Adult Applications); Formal Hearing Position Statement, p. 1.

All three members of the G. family are engaging, alert, and intelligent individuals who are not now, and were not in 2007, mentally or physically disabled.<sup>4</sup> They were not serving on active duty as members of the armed forces of the United States in 2007.<sup>5</sup>

A. G. does not live with his parents, but he shares a post office box with them and they appear to have a close relationship. It has been their longstanding custom to get together in late March of every year, fill out paper PFD applications together, and submit the forms by mail together. All three of them recall following the same pattern in 2007.<sup>6</sup> They are credible witnesses, and their testimony on this point is convincing.

The G.s put the applications in a single envelope and mailed them from the Eagle River Post Office, where their post office box is located. They appear to have done this a week or two before the March 31, 2007 deadline. They did not use a certified or return receipt service.

The elder G.s had requested that their dividends be deposited directly with their bank, while A. G. expected his PFD to be garnished for child support. In November of 2007, A. learned from his former spouse that his dividend had not been received, and the elder G.s inquired with their bank and learned that their own PFDs had not been deposited in their account. They inquired about their applications and were told that there was none on record. They then submitted new, late applications, which the division received on November 23, 2007.<sup>7</sup>

The division denied the three November application because they were not filed by the March 31, 2007 deadline and the G.s did not qualify for any exception to the filing deadline. The division checked its records by social security number and name, and found that for 2007 the only application it had for each family member was the November application.<sup>8</sup>

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<sup>4</sup> Observations at hearing; testimony of G. family.

<sup>5</sup> Exhibit 1; testimony of G. family.

<sup>6</sup> Testimony of G. family.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Testimony of Peter Scott. Mr. Scott noted that an image database for the 2007 dividend year was lost through an error, but the database was subsequently fully restored using the hard copies of the applications. This actually resulted in a more thorough processing of the 2007 paper applications than would normally occur. There is no evidence that any applications were lost.

### III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>9</sup> The only exceptions to the filing deadline allowed by law are for certain disabled people when their disability prevents 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>10</sup> Since none of the G.s is in one of these categories, the March 31 deadline was absolute for them.

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

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.

Alternatively, 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 the original application was timely.<sup>11</sup>

The PFD Division has established that it does not have the G.s' applications. The G.s do not have a mailing receipt or return receipt, and they do not have an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original applications to become delayed or lost.

It seems likely that the G.s filled out and mailed their applications during the application period, following to their usual pattern. Assuming they did, however, the Department of Revenue remains bound by its own regulations. Since the department does not have the applications—for whatever reason, whether it be an error by the senders, and error by the Postal Service, an error by

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<sup>9</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>10</sup> AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

<sup>11</sup> 15 AAC 23.103(h).

the PFD Division, or some happenstance beyond the control of any of them<sup>12</sup>—the dividend can be paid only if the G.s produce one of the specified kinds of evidence, which they do not have. The regulations do not permit any discretion in this situation and the G.s' 2007 PFD applications cannot be considered timely.

Government officials can only pay a dividend to people who qualify and who either make a timely application or can show, through a limited range of indisputable means, that they correctly took the steps to make a timely application. For 2007, W., C., and A. G. did not make that showing, and therefore they do not fall among those to whom the officials can make the payment.

#### **IV. Conclusion**

Because the G.s' only applications on file were submitted after the deadline and they did not meet any of the exceptions to the filing deadline, their applications are properly denied. This decision does not affect their status as residents or their eligibility for 2008 and future dividends.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of W. R. G., Sr., C. A. G., and A. W. G. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 29<sup>th</sup> day of October, 2008.

By:                     Signed                      
Christopher Kennedy  
Administrative Law Judge

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<sup>12</sup> The G.s could have, in effect, purchased insurance against such an event by sending their applications by certified mail. They chose not to do so.

## 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 25th day of November, 2008.

By: \_\_\_\_\_ *Signed*

Signature

\_\_\_\_\_ Christopher Kennedy

Name

\_\_\_\_\_ [Commissioner's Delegee]

Title

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