

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

IN THE MATTER OF )

L. L. )

2007 Permanent Fund Dividend )

Case No. OAH 08-0670-PFD

**DECISION**

**I. Introduction**

L. L. filed a late application for a 2007 permanent fund dividend for the purpose of initiating an appeal regarding applications she allegedly filed during the application period. The Permanent Fund Dividend Division (“the division”) determined that Ms. L. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. L.’s request, a formal hearing was held on January 20, 2009. Ms. L. appeared by telephone. PFD Specialist Peter Scott represented the division.

Because Ms. L. is not able to produce evidence of timely filing in the form required by law, the division’s decision is affirmed.

**II. Facts**

Ms. L. testified that she attempted to apply for a 2007 permanent fund dividend online during the application period, but was not successful. Ms. L. testified that at some point information on a page she viewed stated that she would be sent an email confirmation, but that this would take some additional time for people who had Hotmail accounts, which Ms. L. did. It was not clear from Ms. L.’s testimony whether she was attempting to open a PFD application or a MyAlaska account, but she never did receive any confirmation in her Hotmail email account.

Ms. L.’s father, K. L., testified that he had assisted her and tried multiple times without success to file an online application. Mr. L. testified that he called the division for assistance and left messages, but never received a call back. Mr. L. testified that he knows the division’s assertion that it never had record of an electronic application for Ms. L. is false, because when he tried to create a new account for Ms. L., the system advised him that an account had already been opened for a person with Ms. L.’s name and social security number.

Ms. L. further testified that because of her difficulties with the online application process, she filled out a paper application and mailed it to the division before the end of the application period. Ms. L. did not keep a copy of the paper application or obtain a mailing receipt. The division has no records indicating that it received either an electronic or a paper application for Ms.

L. during the application period. When she did not receive a dividend, Ms. L. filed a paper application for the purpose of initiating this appeal on December 17, 2007.

Ms. L. and Mr. L. both testified, and it is undisputed, that as a college student on a limited budget Ms. L. is severely impacted by the loss of a dividend.

### **III. Discussion**

At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.<sup>1</sup> With certain exceptions that do not apply to this case, applications for permanent fund dividends must be filed between January 2 and March 31 of the dividend year.<sup>2</sup> It is the applicant's responsibility to ensure that an application is timely delivered to the department.<sup>3</sup>

This case is governed specifically by 15 AAC 23.103(h), which reads:

If an individual has timely filed an application but the department does not have that application on file, the individual may submit a request to reapply on or before December 31 of the dividend year. A request to reapply must be accompanied by one of the following forms of evidence that an application was timely filed with the department:

- (1) a mailing receipt;
- (2) a mailing return receipt documenting delivery to the department or other evidence of receipt by the department; or
- (3) repealed 1/1/2006;
  - (A) repealed 1/1/99;
  - (B) repealed 1/1/99;
- (4) a copy of the computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process.

This regulation recognizes the possibility that there are many reasons why the division might not have an application on file for someone who actually filed or mailed one on time. The Postal Service can lose envelopes, division employees can lose documents, applicants can lose envelopes they thought they had mailed, thieves and vandals can steal or destroy documents, and computer systems can fail and result in lost data. In all of these situations, the law places the responsibility for proving that applications were timely filed on the applicant, regardless of the possibility of error

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<sup>1</sup> 15 AAC 05.030(h).

<sup>2</sup> AS 43.23.011.

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

on the part of the postal service or the division. Further, the division will accept only the specified kinds of evidence as proof that the applicant did file an application on time.

Ms. L. admits that, despite her efforts, she never was able to successfully file an online application, and that she did not receive a confirmation number.<sup>4</sup> It is further undisputed that Ms. L. did not retain any proof of mailing her application, such as a mailing receipt or certified mail receipt. A preponderance of the evidence shows that the division does not currently have any record of Ms. L. filing an application during the application period.

Under the circumstances of this case, there is no provision of law that permits the division to grant Ms. L.'s application. Regardless of Ms. L.'s status as an Alaska resident and a conscientious student, the applicable law regarding PFDs requires the applicant to produce a mailing receipt, a confirmation number, or proof of delivery of an application to the department in cases in which there is no application on file for a person. Because no provision of law allows the division or the commissioner to "bend" or overlook the rules in compelling cases, the division's decision must be affirmed.

#### **IV. Conclusion**

The division has no application on file for Ms. L. Ms. L. has not produced evidence of timely filing in the form required by law. The division's decision to deny the application of L. L. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 25th day of February, 2009.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

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<sup>4</sup> Exhibit 6, page 3. It appears possible that Ms. L.'s difficulty online was with the MyAlaska system, not with an online PFD application. According to its website at <https://myalaska.state.ak.us/home/help.html#whatis>, "myAlaska is a system for Secure Single Sign-on and Signature for Citizens, or, an authentication and electronic signature system allowing citizens to interact with multiple State of Alaska services through a single user name and password." A person can use MyAlaska to interact with various state agencies, for example to report a vehicle accident, apply for a PFD, or register as an organ donor.

Ms. and Mr. L. discussed their attempts to access an account or open a new account. While one may open a MyAlaska account and use it to apply for a PFD, there is no system whereby applicants may maintain an "account" with the PFD Division. Each application is a single, isolated transaction. The PFD Division is not able to access a person's MyAlaska account; the division can only receive information submitted through MyAlaska. If Ms. L. had created a MyAlaska account and later had trouble accessing it, the division would have no knowledge or record of the fact.

### 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 26th 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.]