

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

IN THE MATTER OF)	
)	
J. A. and N.A.; R.S. A., II,)	OAH No. 08-0710-PFD
C. T. A., II, M. B. A, II)	Agency No. 2007-063-0495
(minor children))	
<u>2007 Permanent Fund Dividends.</u>)	

DECISION

I. Introduction

J. A. challenges the Permanent Fund Dividend Division’s decision to deny her and her minor children’s applications for the 2007 permanent fund dividend (PFD) because they were not timely filed. Ms. A. requested a formal hearing which was held April 2, 2008. She appeared in person; 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

The unchallenged facts are that in 2007 Ms. A. was in an abusive relationship with her now ex-husband. On January 31, 2007, she and the children were admitted to a domestic violence and sexual assault shelter.¹ She and the children returned to the home in February 2007. Upon returning home she placed their completed 2007 PFD applications in one envelope. She left the envelope out on the counter and when she went to affix postage, the envelope and applications were gone. Her husband told her he had taken the envelope and mailed it.² When neither she nor her minor children received the 2007 PFD, she contacted the PFD office and discovered that their applications had been denied because they were filed after the filing deadline, March 31, 2007. The applications were received by the division on April 4, 2007 in an envelope postmarked on April 2, 2007.³

When Ms. A. confronted her husband, she testified that he told her he had taken them to the post office on March 31, 2007 and handed them to his friend “M.” who worked behind the counter. The only explanation Mr. A. could provide to her was that M. forgot to hand cancel the letter which is why it was not cancelled until two days later in Anchorage.

¹ Exhibit 7 at 2.
² A. Testimony.
³ Exhibit 1, at 11.

Ms. A. submitted a letter from the United States Postal Service dated April 16, 2009.⁴ This letter denied any postal error associated with the late postmark on the application and therefore, the Postal Service explained, it would not write a letter supporting, Mr. A.'s claim that the applications were mailed on March 31, 2007.

Ms. A. testified that it was her practice to mail the families applications in February of the dividend year. The applications received by the division were not the ones Ms. A. had completed and signed. Ms. A. testified that it was not her signature that appeared at the bottom of the application completed in her name. Moreover, the children's applications listed their father as the children's sponsor.⁵ Ms. A. explained that based on her history with her ex-husband, she believes that he destroyed the original applications that Ms. A. had placed in the envelope and completed new applications, falsifying her signature and naming himself as the children's sponsor so he could take their PFDs. She testified that she did not even know the person he named as someone who could verify Ms. A.'s residency.

III. Discussion

A comparison of the signature on the purported application of Ms. A. and her signature on other documents contained in the division's file appear to corroborate her contention that someone other than herself signed the 2007 PFD application submitted in her name. Therefore, it is questionable whether the division ever received an application from Ms. A. However, this is not the basis for the division's denial. The division denied the applications because they were not received timely. Ms. A.'s testimony regarding her relationship with her then husband is corroborated by records contained in the file. Ms. A.'s testimony was consistent. Her explanation is reasonable under the circumstances and her testimony was credible.

However, it is an applicant's responsibility to ensure that their application is timely delivered to the division.⁶ The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.⁷ A mailed application must be postmarked during the application period to be considered timely filed.⁸ There are only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services and eligible for hostile fire or

⁴ The letter was submitted post hearing, but before the record closed.

⁵ At the hearing, Mr. Scott confirmed that Mr. A.'s application was denied as not timely filed.

⁶ 15 AAC 23.103(g).

⁷ AS 43.23.011(a).

⁸ 15 AAC 103(a).

imminent danger pay.⁹ At the time in question Ms. A. was not in the armed services nor has she submitted evidence that she was disabled as defined by AS 43.23.095(2), so the March 31 deadline was absolute for her.¹⁰

“An application mailed before, but postmarked after, the end of the application period is not timely filed...” unless the individual obtains a letter from the post office that describes a specific circumstance under which the postal service incorrectly posted the application or caused a delay in the posting.¹¹ Ms. A. did submit a letter from the post office, but it does not describe a specific circumstance and thus is insufficient to meet the regulatory requirements. An official statement from the Postal Service describing a specific circumstance might be, for example, a statement that the mailbox was incorrectly labeled, that the pickup from that box was not made as scheduled on March 31, or that a mail bag was lost. Without such an official statement, the applications cannot be considered timely. The Department of Revenue is bound by its own regulations. The regulations leave no discretion in this matter.

There is another subsection of 15 AAC 23.103 that deals with the problem of applications postmarked after the deadline. 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 timely filed.¹² Here, Ms. A. does not have a mailing receipt or return receipt. Without such a receipt, the regulation does not permit the division or the administrative law judge to grant the applications.

The minor children, N., R., C., and M., may apply for their 2007 dividends when each reaches the age of eighteen, so long as he or she does so before he or she reaches the age of twenty.¹³ This opportunity will be lost for each child after that child turns twenty. Therefore, Ms. A. should remind N., R., C., and M. to apply immediately after their eighteenth birthdays.

⁹ 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).

¹⁰ The division, upon learning that Ms. A. had been in a shelter, provided Ms. A. with the definition of disabled and their form entitled “Licensed Health Care Provider’s Certification of Disability” to determine whether Ms. A. would fit within this exception. Exhibit 5. Ms. A. agrees that she was not disabled as defined by the PFD statute.

¹¹ 15 AAC 23.103(g).

¹² 15 AAC 23.103(h).

¹³ 15 AAC 23.133(b)-(c).

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the 2007 PFD applications of J. A.; N. A.; R. S. A., II; C. T. A., II; and M. B. A., II, should be AFFIRMED because their applications on file with the division were submitted after the deadline and they did not meet the requirements of 15 AAC 23.103(g) or (h) with respect to their prior applications. This decision does not affect their status as residents or their eligibility for 2008 and future dividends. Nor does it affect the children’s eligibility to apply for a 2007 PFD when each child reaches the age of eighteen.

DATED this 5th day of June, 2009.

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 6th day of July, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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