

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

IN THE MATTER OF )  
 )  
A. & M. H. )  
 ) Case No. OAH 09-0027-PFD  
2006 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

A. and M. H. have submitted late applications for 2006 dividends, asserting that they also submitted timely applications, even though the division does not have these timely applications on file. The Permanent Fund Dividend Division (“the division”) determined that the H.s were not eligible, and it denied the application initially and at the informal appeal level. At Mr. and Ms. H.’s request, a formal hearing was held on February 24, 2009. Mr. and Ms. H. appeared by telephone; PFD Specialist Peter Scott represented the PFD Division. The record was left open, and the H.’s filed additional evidence.

Although the H.s were credible witnesses and have submitted evidence the division received their applications as required by 15 AAC 23.103(h)(2), they did not submit their reapplications before the December 31, 2006 deadline. Even with evidence of timely filing of original applications, the H.s may not resubmit applications. The division’s decision to deny the resubmitted applications must be affirmed.

**II. Facts**

The H.s have consistently maintained that they completed paper applications for 2006 dividends and placed the applications in the same envelope that contained a paper application for their adult son, N. G., and then mailed the envelope containing all three applications. There is no dispute that the division timely received and granted Mr. G.’s application for a 2006 dividend. At the hearing, Ms. H. testified under oath that she specifically remembered sealing all three applications in the same envelope and mailing it. After the hearing, the H.s submitted into evidence a copy of Mr. G.’s application, signed and dated on March 8, 2006. Mr. G. had named Ms. H. as one of his verifiers.

The year 2006 ended without the H.s being aware that they had not received dividends. Ms. H. testified that “I didn’t realize that we hadn’t even gotten ours until I went to file the next year, and tried to file online, and I couldn’t.” Ms. H. then contacted the division, and learned for the first time that there was no application on file for her or for Mr. H. The H.s obtained extra 2006

application forms, and signed and dated their duplicate applications on December 1, 2007. The division received them on December 5, 2007.

### **III. Discussion**

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>1</sup> It is the applicant's responsibility to ensure that an application is timely delivered to the department.<sup>2</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.

There are two issues in this case. The first issue is whether Mr. G.'s application may be considered "other evidence of receipt by the department" under subparagraph (2). The fact that the division received Mr. G.'s application does not necessarily prove that the division also received the H.s' applications as well. It merely shows that the division did receive the envelope that the H.s claim contained their applications. However, a mailing receipt would not prove that an applicant actually mailed a PFD application to the division; it would merely prove that the applicant, or somebody else, mailed something during the application period. In both cases, submitting such evidence would not automatically entitle the applicants to have their late applications granted; it would merely allow them to proceed with filing a late application and presenting evidence that they did apply on time. It would remain to the division, or to a final decision maker in the case of an appeal, to determine whether the evidence was credible.

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<sup>1</sup> AS 43.23.011.

<sup>2</sup> 15 AAC 23.103(g).

In this case, it is clear that the division did receive an envelope containing at least one of the applications the H.s claim was in it. Though it does not conclude the matter of whether the H.s did actually submit their own applications on time, Mr. G.'s timely application does constitute "other evidence of receipt by the department" for purposes of 15 AAC 23.103(h)(2). The applicants were therefore entitled to reapply before December 31 of the dividend year, and to present any additional evidence that they did actually file on time.

The second issue in this case concerns the timeliness not of the original applications, but of the H.s' resubmitted applications. The applicable regulation clearly states that if the division does not have an application on file for a person, and the person submits the correct form of proof that an application was timely made, the "individual may submit a request to reapply on or before December 31 of the dividend year." Because the dividend year in this case was 2006, the H.s would have had to submit their second applications on or before December 31, 2006. There is no dispute that the H.s did not resubmit their applications until almost a year after the deadline. The H.s indicate that, upon contacting the division and their state legislative representatives, there may have been some delay before they were advised to submit refiled applications. However, the H.s also acknowledge that because of their busy lifestyle they did not notice that they had not received 2006 dividends until some time in the 2007 application period, after the passing of the deadline to resubmit applications for 2006 dividends.

Although the H.s were credible witnesses and they have submitted some evidence that the division received their 2006 applications on time, it is unfortunately not necessary to reach a decision on the question of whether the H.s did actually submit timely applications for 2006 dividends. Because the H.s did not resubmit their 2006 applications before December 31, 2006, as required by 15 AAC 23.103(h), the division was correctly applying the law when it made the decision to deny the resubmitted applications.

#### **IV. Conclusion**

The department does not have timely applications on file for the H.s for 2006 dividends. The H.s did not reapply before December 31, 2006. The division was correctly following the law

under 15 AAC 23.103(h) when it made the decision to deny the H.s' applications for 2006 dividends. The decision of the Permanent Fund Dividend Division to deny the applications of A. H. and M. H. for 2006 permanent fund dividends is AFFIRMED.

DATED this 22<sup>nd</sup> day of April, 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 18<sup>th</sup> day of May, 2009.

By: Signed  
Signature  
Dale Whitney  
Name  
Administrative Law Judge  
Title

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