

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

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| In the Matter of                    | ) |                          |
|                                     | ) |                          |
| R. A. M.                            | ) | OAH No. 09-0085-PFD      |
|                                     | ) | Agency No. 2008-064-7478 |
| <u>2008 Permanent Fund Dividend</u> | ) |                          |

**DECISION**

**I. Introduction**

R. A. M. of Eagle River seeks to establish that he timely applied for a 2008 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application in its files, denied his application initially and at the informal appeal level. Mr. M. requested a formal hearing. The hearing convened on April 1, 2009, with Mr. M. attending in person and PFD Specialist Peter Scott participating by telephone. Mr. M. testified on his own behalf and offered one additional witness; Mr. Scott gave testimony on behalf of the PFD Division.

The Division's denial is affirmed because the only application on file was submitted late and Mr. M. does not have the proof of timely mailing or delivery required by law. Although it is probable that Mr. M. mailed an application before the filing deadline and that the application simply became lost, Department of Revenue regulations provide no discretion to grant a dividend in this unfortunate situation.

**II. Facts**

R. M., age 51, is a 10-year Alaska resident who has received dividends every year since 1999.<sup>1</sup> Apart from the question of timeliness of his application, there is no dispute that he met all eligibility requirements for the 2008 dividend.

Mr. M. is an articulate individual and there is no evidence that he is now, or was in 2008, mentally or physically disabled in a way that affected his ability to file for a PFD.<sup>2</sup> Mr. M. was not serving on active duty as a member of the armed forces of the United States in 2008.<sup>3</sup>

Mr. M. remembers sending in a paper 2008 application in late January or early February of that year. Mr. M. lives with a roommate who has a computer. In one past year—probably 2006—his roommate had filed for him on line, and close to the deadline in 2008 his roommate again asked

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<sup>1</sup> Testimony of R. M. and Peter Scott.

<sup>2</sup> Observations at hearing; review of record; testimony of Mr. M.

<sup>3</sup> Exhibit 1, p. 1 (2008 Adult Application); testimony of Mr. M.

him if he would like that done. Both M. and the roommate remember that he declined the offer on the basis that he had already filed by mail, and did not want to be accused of filing twice. The testimony is credible. It is more likely than not that Mr. M. did mail a 2008 application as he remembers, prior to the filing deadline. He did not use a certified or return receipt service.<sup>4</sup>

In September of 2008, Mr. M. noticed that he had received no PFD payment in the accelerated distribution of dividends that occurred in that year.<sup>5</sup> He inquired with the Division and learned that there was no record of an application from him. He obtained a new, late-distribution application and submitted it on September 22, 2008.<sup>6</sup>

The Division denied the September application because it was not filed by the March 31, 2008 deadline and Mr. M. did not qualify for any exception to the filing deadline. The Division checked its records by social security number and by name, using both the correct name and a variety of potential misspellings, and found that the only 2008 application it had for Mr. M. was the September application.<sup>7</sup>

### **III. Discussion**

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>8</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>9</sup> Since Mr. M. is in one of these categories, the March 31 deadline was absolute for him.

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

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<sup>4</sup> Testimony of Messrs. M. and L.

<sup>5</sup> Testimony of Mr. M.

<sup>6</sup> *Id.*; Exhibit 1.

<sup>7</sup> Testimony and Affidavit of Peter Scott.

<sup>8</sup> Alaska Statute 43.23.011(a); 15 AAC 23.103(a).

<sup>9</sup> Alaska Statute 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

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 request to reapply on or before December 31 of the dividend year if the request to reapply is accompanied by a mailing receipt, a mailing return receipt, or other evidence of timely *receipt* by the department.<sup>10</sup>

The PFD Division has established that it does not have Mr. M.'s application. Mr. M. does not have a mailing receipt or return receipt, he does not have any other evidence that the department received his first application, and he does not have an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original application to become delayed or lost.

The Department of Revenue is bound by its own regulations. Since the department does not have the applications—for whatever reason, whether it be that they were never mailed, that the sender erred in some other way, that the Postal Service erred, that the PFD Division erred, or that something happened beyond the control of any of them<sup>11</sup>—the dividend can be paid only if Mr. M. produces one of the specified kinds of evidence, which he does not have. The regulations do not permit any discretion in this situation and Mr. M.'s 2008 PFD applications cannot be considered timely. The Department of Revenue has been consistent in its application of the statutes and regulations regarding timeliness.<sup>12</sup>

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 2008, R. M. did not make that showing, and therefore he does not fall among those to whom the officials can make the payment.

#### **IV. Conclusion**

Because Mr. M.'s only application on file was submitted after the deadline and he did not meet any of the exceptions to the filing deadline, his application is properly denied. This decision

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<sup>10</sup> 15 AAC 23.103(h). The department has interpreted this regulation to encompass certain records that are the "substantial equivalent" of a mailing receipt. *See, e.g., In re G.W. & M.E.*, OAH No. 07-0605-PFD (adopted Nov. 14, 2008) and the cases summarized in footnote 27 of that decision (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD070605.pdf>).

<sup>11</sup> Mr. M. could have, in effect, purchased insurance against such an event by sending the application by certified mail. He chose not to do so.

<sup>12</sup> The department's decisions on this topic can be found among the cases linked at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

does not affect his status as a resident or his eligibility for 2009 and future dividends. The decision of the Permanent Fund Dividend Division to deny the application of R. A. M. for a 2008 Permanent Fund Dividend is AFFIRMED.

DATED this 2<sup>nd</sup> day of April, 2009.

By: Signed  
Christopher Kennedy  
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 1st day of May, 2009.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Administrative Law Judge  
Title

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