

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

IN THE MATTER OF	)	
	)	
D. A. G., Jr. and	)	OAH No. 09-0095-PFD
T. A. G.	)	Agency No. 2008-064-6256
	)	
<u>2008 Permanent Fund Dividends</u>	)	

**DECISION**

**I. Introduction**

D. A. G., Jr. and T. G. applied for the 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that the G.'s had filed their applications after the filing deadline and for that reason it denied their applications initially and at the informal appeal level. They requested a formal hearing which was held on March 25, 2009. The G.'s did not participate in the hearing or otherwise supplement the record on appeal.<sup>1</sup> The division's denial is affirmed because the G.'s applications were filed late and did not qualify for any exception to the deadline.

**II. Facts**

On May 29, 2008, the division received the G.'s 2008 PFD applications dated May 22, 2009.<sup>2</sup> The G.'s allege that they sent their applications by mail the week of February 25, 2008. Mr. G. has submitted PFD applications since 1993; Ms. G. has submitted PFD applications since 2002.<sup>3</sup> Neither received the 2003 PFD because they did not timely file for that PFD.<sup>4</sup> In support of their appeal, they wrote:

It appears that our original application was lost in the mail. We dropped the application[s] at the post office so we did not mail it certified, nor have we done so in the past. We were not aware that we needed to send the application in certified to protect our dividend. We never sent it that way in the past. We have always applied via mail and have never had a problem filing that way in the past.<sup>5</sup>

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<sup>1</sup> "If a person requests a hearing and fails to appear at the hearing, the [Administrative Law Judge] may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j). Before the hearing commenced, the G.'s were called at the phone number of record. No one answered but a message was left on the answering device instructing them that the record would remain open for 10 days.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Affidavit of Kimberly Colby.

<sup>4</sup> Exhibit 8.

<sup>5</sup> Exhibit 5 at 2.

### III. Discussion

It is an applicant's responsibility to ensure that their application is timely delivered to the division.<sup>6</sup> The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.<sup>7</sup>

A mailed application must be postmarked during the application period to be considered timely filed.<sup>8</sup> The legislature provided very few exceptions to this bright line rule.<sup>9</sup> There is a provision that permits an individual to apply for a PFD after the application deadline if the individual is a member of the armed services and eligible for hostile fire or imminent danger pay.<sup>10</sup> There are also provisions that effectively allow certain minors and disabled people (as defined by AS 43.23.095(2)) to apply after the deadline.<sup>11</sup> The G.'s have not alleged that they were in the military or disabled, so the March 31 deadline was absolute for them.

The only 2008 PFD application on file with the division for the G.'s are their applications received on May 29, 2008. The regulation addressing applications received after the deadline is found at 15 AAC 23.103. 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 mailed between January 1 and March 31 of the dividend year.<sup>12</sup>

There is another subsection of 15 AAC 23.103, that deals with the problem of applications postmarked after the deadline. It reads:

(g) 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 a paper 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....

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<sup>6</sup> 15 AAC 23.103(g).

<sup>7</sup> AS 43.23.011(a).

<sup>8</sup> 15 AAC 23.103(a).

<sup>9</sup> AS 43.23.011(b), (c); AS 43.23.055(3), (7).

<sup>10</sup> AS 43.23.011(b), (c).

<sup>11</sup> 15 AAC 23.133.

<sup>12</sup> 15 AAC 23.103(h).

In the G.'s situation, there were two ways around the late postmark: producing either 1) an official statement from the Postal Service showing that incorrect handling or delay by the Postal Service caused the late postmark or 2) a mailing receipt showing the original application was mailed between January 1, 2008, and March 31, 2008. Here, the G.'s have neither of the regulatorily required pieces of proof. The regulation does not permit the division or the administrative law judge to exercise discretion in these cases. Without the regulatorily prescribed evidence, the regulation does not permit the administrative law judge to grant the applications.

**IV. Conclusion**

The decision of the Permanent Fund Dividend Division to deny the applications of D. A. G., Jr. and T. A. G. for the 2008 permanent fund dividend is AFFIRMED. 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 2009 and future dividends.

DATED this 10<sup>th</sup> 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 10th 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.]