

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

IN THE MATTER OF)
K. S. S., and) OAH No. 09-0099-PFD
W. F. S. (minor child)) Agency No. 2008-064-7812
2008 Permanent Fund Dividends)

DECISION

I. Introduction

K. S. S. applied for a 2008 permanent fund dividend for herself and on behalf of her minor child, W.¹ The two applications were placed in one envelope. The Permanent Fund Dividend Division determined that Ms. S. had filed their applications after the filing deadline and for that reason it denied their applications initially and at the informal appeal level. Ms. S. requested a formal hearing which was held March 25, 2009. Ms. S. and W. appeared in person; Kimberly Colby 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

Ms. S. has received a PFD since the inception of the program. She has always mailed her PFD applications and until the 2008 PFD, her applications were always timely. In 2008, Ms. S. placed both applications in one envelope and placed it in a locked mailbox for delivery. When she and W. did not receive a PFD in October, they contacted the division and were informed that the division did not have a record of receiving their applications. The S.s each filed a second application. The second applications were received by the division on October 13, 2008 and denied because they were received after the filing deadline.² Ms. S. appealed.

Ms. S. explained that she did not have proof of mailing other than her testimony. She has never had an item placed in her locked mail box not received by the intended recipient other than the 2008 PFD applications. She argues that she did not file late because she did timely place their original applications in the mail. The “late” applications were their “re-applications.”

¹ At the time of hearing W. was no longer a minor.
² Exhibit 1; Exhibit 2.

III. Discussion

The only bar to the S.s' receipt of the 2008 PFD is the timeliness of their applications. There are no other issues and their residency is not in question. It is an applicant's responsibility to ensure that their application is timely delivered to the division.³ The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.⁴

A mailed application must be postmarked during the application period to be considered timely filed.⁵ The legislature provided very few exceptions to this bright line rule.⁶ 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.⁷ 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.⁸ At the time in question, Ms. S. was neither in the military nor disabled, so the March 31 deadline was absolute for her.

The only 2008 PFD application on file with the division for the S.s are their applications received on October 13, 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.⁹

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

³ 15 AAC 23.103(g).

⁴ AS 43.23.011(a).

⁵ 15 AAC 23.103(a).

⁶ AS 43.23.011(b), (c); AS 43.23.055(3), (7).

⁷ AS 43.23.011(b), (c).

⁸ 15 AAC 23.133.

⁹ 15 AAC 23.103(h).

service incorrectly posted the individual's application or caused a delay in posting....

In the S.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, Ms. S. does not have either of the regulatorily required pieces of proof.

Ms. S. testified credibly and it is more probable than not that she did timely file their 2008 PFD applications. However, 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.

Because W. has turned 18 years of age he may now apply for his 2008 dividend so long as he does so before he reaches the age of twenty.¹⁰ This opportunity will be lost after W. turns twenty. Therefore, he should immediately contact the PFD office, obtain the proper application form and file for a 2008 PFD.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the applications of K. S. S. and W. F. S. for the 2008 permanent fund dividends 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. Nor does it affect W.'s eligibility to apply for a 2008 PFD before he reaches the age of twenty.

DATED this 26th day of March, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁰ 15 AAC 23.133(b)-(c).

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 24th day of April, 2009.

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

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