

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

In the Matter of)	
)	
A. P. H. and)	
N. E. H.)	OAH No. 09-0119-PFD
)	Agency No. 2008-064-6254
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

A. and N. H. of Fairbanks seek an exception from the filing deadline for the 2008 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division denied their applications initially and at the informal appeal level on the basis that the applications were late. The H.s requested a formal hearing. The hearing convened on April 7, 2009, with both applicants attending in person and PFD Specialist Kimberly Colby participating by telephone. Mr. and Mrs. H. were the only witnesses to testify at the hearing.

The Division’s denial is affirmed because the applications were submitted late and the H.s do not fit within any of the few exceptions to the filing deadline that the law allows. The law provides no discretion to grant a dividend in this unfortunate situation.

II. Facts

A. and N. H. are 35-year Alaska residents who, with the exception of 2008, have received dividends every year from the beginning of the program.¹ Apart from the question of timeliness, there is no dispute that each of them met all eligibility requirements for the 2008 dividend.

Mr. H. is in his early 70s and Mrs. H. is in her late 60s, but both give the impression of being younger. They are vibrant and articulate individuals, and there is no evidence that either of them is now, or was in 2008, mentally or physically disabled.² Neither of them was serving on active duty as a member of the armed forces of the United States in 2008.³

On October 1, 2007, the H.s left Alaska to take care of Mr. H.’s 90-year-old mother, who lived on an isolated farm in Minnesota. They did not know how long they would be gone when they left, but they envisioned an absence of only a few months. They left their house in the care of

¹ Testimony of Mr. H.
² Observations at hearing; review of record; testimony of Mr. & Mrs. H.
³ Exhibit 1, pp. 1, 5 (2008 Adult Applications).

house sitters, arranged for payment of their bills, and gave instructions for their mail to be held until they returned.⁴

Mr. H.'s mother was blind and in severe pain from advanced arthritis, and she required essentially round-the-clock care. Mr. H. provided this care from October until March, with only a single four-day break in November. Mrs. H. assisted for parts of this period. By January, the mother was completely bedridden, requiring even more extensive care.⁵

On March 12, 2008, Mr. H.'s mother moved to a nursing home. For most or all of the remainder of March, the H.s worked with other family members to sort out the accumulated possessions of 70 years of living on the same farm.⁶

Although parts of this experience were rewarding, there was also a great deal of stress surrounding the care of the family matriarch, the decision to move her to a nursing home, and the winding up of her affairs on the farm. The H.s were entirely preoccupied with these tasks. It did not occur to them to file for their PFDs. Since their mail was being held, they did not see the PFD applications that came to their home in the mail. Since they do not use computers and did not otherwise have access to Alaska news media, they did not see media reminders to file for the dividend.⁷

The H.s returned to Fairbanks on May 13, 2008. They found their PFD applications among the accumulated mail.⁸ They sent them in shortly thereafter; the postmark for the applications is May 27, 2008.⁹

III. Discussion

The general rule set by the Alaska Legislature is that “[a]n application for a permanent fund dividend shall be filed during the period that begins January 1 and ends March 31 of that dividend year.”¹⁰ 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

⁴ Testimony of H.s; Exhibit 3, p. 5 (handwritten statement of Mrs. H.).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Testimony of Mr. H.

⁹ Exhibit 1, p. 9 (copy of envelope).

¹⁰ Alaska Statute 43.23.011(a); *see also* 15 AAC 23.103(a) (an application “postmarked after the end of the application period . . . is not timely”).

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.¹¹

The exceptions for military people and children clearly do not apply to the H.s. Although the H.s did not claim to have been disabled, the administrative law judge explored at the hearing the possibility that they might fit within the disability exception. To qualify for this exception, a person must meet the definition of “disabled” in the PFD statutes, and must provide a certification from a licensed health care provider (1) confirming that he or she met this definition “on March 31 of the dividend year” and (2) explaining “why the disability prevented the applicant from timely filing.”¹²

The definition of “disabled” for these purposes is:

physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause¹³

The H.s have not provided a statement from a health care provider certifying that on March 31, 2008 they were so emotionally stressed by the activities in Minnesota that they were “physically or mentally unable to complete and sign an application,” and the testimony does not provide any basis to suppose such a certification could truthfully be provided. Certainly, the H.s were preoccupied with the good work they were doing, but it seems certain that if someone had reminded them about their PFD applications or if they had been in surroundings more conducive to remembering their Alaska obligations, they would have been able to complete and sign them. They were not disabled.¹⁴

The Department of Revenue is bound by the Legislature’s statutes and its own regulations. The laws do not permit any discretion in this situation and the H.s cannot be given an extension from the 2008 filing deadline.

¹¹ Alaska Statute 43.23.011(b), (c); 15 AAC 23.133.

¹² 15 AAC 23.133(d).

¹³ Alaska Statute 43.23.095(2).

¹⁴ This conclusion is consistent with the way the disability exception has been applied to other applicants over the years. Examples from prior cases are *In re C.S.*, OAH No. 05-0028-PFD (Commissioner of Revenue, Aug. 25, 2005) (sick with flu at end of application period—not disabled from filing); *In re M.J.*, OAH No. 07-0508-PFD (Commissioner of Revenue, Jan. 2, 2008) (80-year-old cancer patient’s memory problems and confusion, which caused her to forget to apply, were sufficiently acute to render her disabled).

Government officials can only pay a dividend to people who qualify and who take timely steps to apply. For 2008, Mr. and Mrs. H. did not apply on time, and therefore they do not fall among those to whom the officials can make the payment.¹⁵

IV. Conclusion

Because Mr. and Mrs. H.'s applications were submitted after the deadline and they did not meet any of the exceptions to the filing deadline, their applications are properly denied. This decision does not affect their status as residents or their eligibility for 2009 and future dividends. The decision of the Permanent Fund Dividend Division to deny the applications of A. P. H. and N. E. H. for the 2008 Permanent Fund Dividend is AFFIRMED.

DATED this 8th 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 18th day of May, 2009.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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

¹⁵ This decision applies to both the base amount of the 2008 PFD and to the resource rebate. At the hearing, Mr. H. noted that the resource rebate was approved after the date of his application. However, "the law does not separate this amount from the rest of the PFD." *In re S.G.*, OAH No. 08-0700-PFD (Commissioner of Revenue, March 4, 2009); *In re M.V.G.*, OAH No. 08-0524-PFE (Alaska Comm. Postsecondary Educ., Feb. 12, 2009).