

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

IN THE MATTER OF	)	
	)	
J. B. S.	)	
	)	OAH No. 09-0138-PFD
<u>2008 Permanent Fund Dividend</u>	)	Agency No. 2008-064-8620

**DECISION**

**I. Introduction**

The Permanent Fund Dividend Division denied J. B. S.’s application for the 2008 Permanent Fund Dividend (PFD) because the only application it had on file was received after the filing deadline, March 31, 2008. Following an unsuccessful informal appeal, Mr. S. requested a formal hearing which was held April 28, 2009. Mr. S. participated in person; Kimberly Colby participated telephonically for the division.

The division’s denial is affirmed because the only application on file was submitted late and Mr. S. does not have the proof required by law that would allow the division to accept his application dated November 26, 2008, as a reapplication.

**II. Facts**

Mr. S., a public school teacher, has filed for and received PFDs for over ten years. Other than the timeliness of his application there are no impediments to his eligibility for a 2008 PFD.

In January 2008, Mr. S. successfully completed and filed online 2008 PFD applications for his wife and two children. He then attempted to complete his application. His first attempt failed so he tried again. He believed the second time he was successful, however it was not because the division did not receive his online application and he did not receive a confirmation number. He did receive a confirmation number for his wife and two children.<sup>1</sup>

When everyone else in his family received a 2008 PFD Mr. S. contacted the division. In response the division conducted a search of their records (the data trap) to determine if Mr. S. had completed the first page of the online application. Had Mr. S. entered identifying information and reached the end of the first application screen, the “first page data trap,” this information would have been captured and there would be a record of Mr. S.’s attempt to file. Under an internal policy, if an applicant’s information appears in the first page data trap, the division considers this as evidence

---

<sup>1</sup> S. Testimony.

that the applicant timely filed an incomplete application and it will accept a late filed complete application.<sup>2</sup> The division searched the data trap and did not find any evidence that Mr. S. had entered data for himself that was captured by the first page data trap.<sup>3</sup> The search was thorough – the division checked its records by name, social security number, address and birth date and found no trace of an online application for Mr. S.<sup>4</sup> Once it was determined there was no 2008 PFD application on file for Mr. S. he “reapplied” to start the appeal process.<sup>5</sup> This application was received by the division on November 26, 2008 and denied because it was not timely filed.<sup>6</sup>

Mr. S. believes that because he and his family applied at the same time, his application must have been lost in the system.<sup>7</sup> The division denied Mr. S.’s informal appeal because his application was untimely, he did not claim an exception to the filing deadline and he did not have a computer generated confirmation number for his application.<sup>8</sup>

Mr. S. then filed a formal appeal. In support of his formal appeal he clarified that the November 2008 application was his second application. At hearing, Mr. S. testified that he had no reason to believe he had not successfully applied and that the division’s system is flawed. In support of his position he notes that the division found as a fact in support of his informal appeal that his “attempt to file online was not successful.”<sup>9</sup> Therefore, he asserts that this is an admission by the division that he tried to file online. He asks that if “the State of Alaska admits that I tried to file online, will the State also admit that I am eligible? As a public school teacher..., will the State of Alaska accept its error about my eligibility, and admit that I am a loyal, dedicated Alaska citizen, who deserved the respect given to all Alaskans?”<sup>10</sup>

Most of Mr. S.’s testimony at the hearing focused on his frustration with the PFD process. Specifically, he felt that it was reasonable to believe that he had successfully completed his application he received no error message to the contrary and he received no message indicating that he was logged out of the division’s system. He stated that it was not until he and his wife attempted to file this year that he discovered that an adult may only file one adult application under that

---

<sup>2</sup> Representations contained in division’s Formal Hearing Exhibit Letter and made by Ms. Colby at hearing.

<sup>3</sup> Exhibit 6; Exhibit 7.

<sup>4</sup> *Id.*

<sup>5</sup> Mr. S. considers his November application to be his second application or reapplication. Referring to the November application as a reapplication in this decision is not a finding that Mr. S. did file an earlier application.

<sup>6</sup> Exhibit 1; Exhibit 2.

<sup>7</sup> Exhibit 3 at 2.

<sup>8</sup> Exhibit 4.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> Exhibit 5 at 2.

adult's MyAlaska login. This, Mr. S. believes, may have been part of the problem he encountered because he had already completed his wife's application; he could not complete his application under his MyAlaska login. He also asserted that the division was not fulfilling its mission statement to assure that "all eligible Alaskans receive timely dividend . . . and all internal and external stakeholders are treated with respect."<sup>11</sup> Rather, his experience has left him feeling as if the division was actively trying to prevent him from getting a 2008 PFD.

### III. Discussion

Mr. S.'s primary complaint is that he does not believe that the division is fulfilling its mission. The mission statement references "all *eligible* Alaskans..."<sup>12</sup> There are several requirements that must be met before an Alaskan is eligible for a PFD.<sup>13</sup> One such requirement is that an individual's application is received between January 1 through March 31 of the dividend year.<sup>14</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>15</sup> Since Mr. S. is not claiming to fall within one of these categories, the March 31 filing deadline was absolute for him and to be eligible he must establish that he did timely file his 2008 PFD application.

Mr. S. attempted to timely file his application, but he was unsuccessful. He testified that he had no way of knowing that he had been logged off the division's system or that his second attempt was unsuccessful. However, Mr. S. had just successfully completed three applications. Each successful online application is confirmed by a confirmation page containing a PFD confirmation number. Prior to his application, Mr. S. would have received three "confirmations." When he did not receive a confirmation page for his application he was on notice that his attempt to apply was unsuccessful. Mr. S.'s testimony that he had no way of knowing his application was not successful is not convincing.

---

<sup>11</sup> Exhibit 8.

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> AS 43.23.005.

<sup>14</sup> AS 43.23.011.

<sup>15</sup> AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

The affidavit of S. Edwards establishes that none of Mr. S.'s data was captured so the division will not treat his application as a timely filed incomplete application.<sup>16</sup> Mr. S.'s assertion that the finding of fact in the informal appeal decision that his "attempt to file online was not successful" is an acknowledgment by the division that he did attempt to timely file online is unpersuasive. Rather the statement is a finding in response to Mr. S.'s assertion that he filed online.

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 . . . An online application must be received electronically by the department by midnight Alaska Standard Time on the last day of the application period. An applicant's proof of timely filing an online application is a copy of the computer generated page containing the [PFD] confirmation number received by the applicant after completing the online filing process that shows that the online application was timely delivered to the department<sup>17</sup>*

Under 15 AAC 23.103(h), for applications filed on or before December 31, 2008, if an application was timely filed online but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year if the "reapplication" is accompanied by a copy of the computer generated page containing the confirmation number.<sup>18</sup> Mr. S. does not have a confirmation number for his application. Therefore, his "reapplication" must be denied as a matter of law. Unfortunately, the regulation does not permit any discretion in this situation. Mr. S.'s 2008 PFD application cannot be considered timely and must be denied.

#### **IV. Conclusion**

The 2008 PFD application J. B. S. is denied because his application on file with the division was submitted after the filing deadline and he does not meet the requirements of 15 AAC 23.103(g)

---

<sup>16</sup> Exhibit 6.

<sup>17</sup> (emphasis added).

<sup>18</sup> 15 AAC 23.103(h). For applications filed on or after January 1, 2009, the applicable regulation provides that an otherwise eligible applicant with the opportunity to submit "a notarized affidavit in which the individual attests that the individual mailed or submitted the previous application timely, or a sponsor applying on behalf of the individual attests that the sponsor mailed or submitted the previous application timely...." 15 AAC 23.103(h)(4). An individual may request to reapply pursuant to (h)(4) only once during the individual's lifetime.

or (h) with respect to a prior 2008 application. This decision does not affect Mr. S.'s status as a resident or his eligibility for 2009 and future dividends.

DATED this 27th day of July, 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 24th day of August 2009.

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

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