

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

IN THE MATTER OF	)	
	)	
S. L. & L. A. M.	)	OAH No. 09-0151-PFD
and C. M. &	)	Agency No. 2008-063-0776
J. N. (minor children)	)	Agency No. 2008-063-0777
	)	Agency No. 2008-063-0778
	)	Agency No. 2008-063-0770
<u>2008 Permanent Fund Dividends</u>	)	

**DECISION**

**I. Introduction**

S. L. and L. A. M. applied for a 2008 permanent fund dividend for themselves and on behalf of the minor children C. and J. The four applications were placed in one envelope. The Permanent Fund Dividend Division received the applications after the filing deadline and for that reason it denied their applications initially and at the informal appeal level. The M. requested a formal hearing which was held May 19, 2009. Ms. M. participated telephonically and represented all of the applicants; Pete Scott participated telephonically and represented the division. The division's denial is affirmed because the applications were filed late and do not qualify for any exception to the deadline.

**II. Facts**

The facts are not in dispute. The M.' applications were placed in one envelope which was set out to be picked up by the mail person. A well intentioned neighbor mistakenly brought the envelope back into the house where it was not discovered until after the March 31, 2008, application deadline. Ms. M. mailed the families applications on April 7, 2008, and they were received by the division on April 8, 2008.<sup>1</sup>

**III. Discussion**

The only bar to the M.' 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.<sup>2</sup> The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.<sup>3</sup>

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<sup>1</sup> Exhibit 1 at 9.  
<sup>2</sup> 15 AAC 23.103(g).  
<sup>3</sup> AS 43.23.011(a).

A mailed application must be postmarked during the application period to be considered timely filed.<sup>4</sup> A Department regulation found at 15 AAC 23.103, 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....

The legislature provided very few exceptions to this bright line rule.<sup>5</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>6</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>7</sup> At the time in question, neither Mr. nor Ms. M. has alleged that they were in the military or disabled, so the March 31 deadline was absolute for them.

Ms. M. testified credibly and it is more probable than not that the events unfolded as set forth in her written appeal requests and her testimony. She was forthright and did not deny that the applications were not mailed until after the deadline. However, the regulation does not permit the division or the administrative law judge to exercise discretion in these cases. The regulation does not permit the administrative law judge to grant the applications.

**C. M. and J. N. may apply for their 2008 dividends when each reaches the age of eighteen, so long as each does so before he or she reaches the age of twenty.<sup>8</sup> This opportunity will be lost after C. or J. turn twenty. Therefore, Ms. M. should remind C. and J. to apply immediately after their eighteenth birthdays.**

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<sup>4</sup> 15 AAC 23.103(a).

<sup>5</sup> AS 43.23.011(b), (c); AS 43.23.055(3), (7).

<sup>6</sup> AS 43.23.011(b), (c).

<sup>7</sup> 15 AAC 23.133.

<sup>8</sup> 15 AAC 23.133(b)-(c).

**IV. Conclusion**

The decision of the Permanent Fund Dividend Division to deny the applications of S. L. M., L. A. M., C. M., and J. N. for the 2008 permanent fund dividends is AFFIRMED. Their applications on file with the division were submitted after the deadline and they have not established that on March 31, 2008 they were disabled or in the military. This decision does not affect their status as residents or their eligibility for 2009 and future dividends. Nor does it affect C.'s or J.'s eligibility to apply for a 2008 PFD upon turning eighteen and before reaching the age of twenty.

DATED this 4<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 6<sup>th</sup> 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.]