

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

IN THE MATTER OF)
)
 K. S.)
) Case No. OAH 09-0161-PFD
 2008 Permanent Fund Dividend)

DECISION

I. Introduction

K. S. applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. S. was not eligible, and it denied the application initially and at the informal appeal level. Ms. S. requested a formal hearing and appeared by telephone at a hearing held on April 21, 2009. PFD Specialist Kim Colby represented the PFD Division.

II. Facts

When Ms. S. did not receive a PFD in October of 2008, she contacted the division and learned that the division had no record that she ever applied for a 2008 dividend. Ms. S. then submitted a paper application in order to start this appeal process. The division has searched its records and found no evidence that it ever received an application for a 2008 dividend from Ms. S. until she submitted the late-filed one in October.¹ Ms. S. does not have a mailing receipt or other evidence that the division received an application from her during the application period.

Ms. S. stated that she filled out her application and her children’s applications at the same time, and that the children received their dividends while she did not. On further examination, Ms. S. explained that she filled out the children’s applications, but then gave them to the children’s father to sign as their sponsor. Ms. S. stated that she and the children’s father have been separated for about four years and that they live down the street from each other, but still share a single mailbox. Ms. S. stated that to the best of her recollection, she mailed all the applications at the same time, but her application would have been in a separate envelope from the envelope containing the applications of the children and their father.

III. Discussion

With certain exceptions that do not apply to this case, applications for permanent fund dividends must be filed between January 2 and March 31 of the dividend year.² It is the applicant’s

¹ Exhibit 6.

² AS 43.23.011.

responsibility to ensure that an application is timely delivered to the department.³ At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.⁴

This case is governed specifically by 15 AAC 23.103(h), which reads:

If an individual has timely filed an application but the department does not have that application on file, the individual may submit a request to reapply on or before December 31 of the dividend year. A request to reapply must be accompanied by one of the following forms of evidence that an application was timely filed with the department:

- (1) a mailing receipt;
- (2) a mailing return receipt documenting delivery to the department or other evidence of receipt by the department; or
- (3) repealed 1/1/2006;
 - (A) repealed 1/1/99;
 - (B) repealed 1/1/99;
- (4) a copy of the computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process.

This regulation recognizes the possibility that there are many reasons why the division might not have an application on file for someone who actually filed or mailed one on time. The Postal Service can lose envelopes, division employees can lose documents, applicants can lose envelopes they thought they had mailed, thieves and vandals can steal or destroy documents, and computer systems can fail and result in lost data. In all of these situations, the law places the responsibility for proving that applications were timely filed on the applicant, regardless of the possibility of error on the part of the postal service or the division. Further, the division will accept only the specified kinds of evidence as proof that the applicant did file an application on time.

Ms. S. did not retain any proof of mailing her application, such as a mailing receipt or certified mail receipt. A preponderance of the evidence shows that the division does not currently have any record of Ms. S. filing an application during the application period.

Under the circumstances of this case, there is no provision of law that permits the division to grant Ms. S.'s application. Regardless of Ms. S.'s status as an Alaska resident, the applicable law regarding PFDs requires the applicant to produce a mailing receipt, a confirmation number, or proof of delivery of an application to the department in cases in which there is no application on file for a

³ 15 AAC 23.103(g).

person. Because Ms. S. cannot produce the required evidence of timely filing, under the law the division's decision to deny her application must be affirmed.

IV. Conclusion

The division does not have a timely application on file for Ms. S.. Ms. S. has not produced a mailing receipt, a mailing return receipt documenting delivery to the department or other evidence of receipt by the department, or a copy of the computer-generated page containing a permanent fund dividend confirmation number received by the applicant after completing the online filing process. Ms. S. is therefore not eligible for a 2008 permanent fund dividend. The division's decision to deny Ms. S.'s application for a 2008 permanent fund dividend is AFFIRMED.

DATED this 10th day of June, 2009.

By: Signed
DALE WHITNEY
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 8th day of July, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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