

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

In the Matter of)	
)	
C. J. M.)	OAH No. 09-0173-PFD
)	Agency No. 2008-064-7392
<u>2008 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

C. J. M. seeks to establish that she timely applied for a 2008 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application in its files, denied her application initially and at the informal appeal level. Ms. M. requested a formal hearing by correspondence.

The division's denial is affirmed because the only application on file was submitted late, Ms. M. has not provided the proof of timely mailing or delivery required by law, and it is not possible to find that her late application came about because of a disability or military service. Even if Ms. M. is correct in asserting that she mailed an earlier application and it became lost, Department of Revenue regulations provide no discretion to grant a dividend to her.

II. Facts

C. M. is an Anchorage resident, now about thirty years old, who has qualified for and received Permanent Fund Dividends since she was born.¹ Apart from the question of timeliness of her application, she appears to have met all eligibility requirements for the 2008 dividend.²

Ms. M. has not submitted a statement from a health care provider regarding disability. There is no evidence to find that Ms. M. is mentally or physically disabled. Ms. M. was not serving on active duty as a member of the armed forces of the United States in 2007 or 2008.³

Ms. M. recalls mailing a paper 2008 PFD application on February 20, 2008.⁴ Her mother attests that she did so, recalling that the location was the University of Alaska-Anchorage Commons mail center.⁵ Ms. M. did not use a certified or return receipt service.⁶

¹ See Exhibit 1, p. 1 (2008 Adult Application); Exhibit 5, p. 2 (Request for Formal Appeal).

² See Exhibit 1 (2008 Adult Application).

³ *Id.*, p. 1.

⁴ Exhibit 3, p. 2 (Request for Informal Appeal).

⁵ *Id.*, p. 3 (Affidavit of S. M.).

⁶ Exhibit 5, p. 2 (Request for Formal Hearing).

In the summer of 2008, Ms. M. went on line to check the status of her application.⁷ She learned that there was none on record.⁸ Ms. M. then submitted a new, late application, which the division received on September 16, 2008.⁹

The division denied Ms. M.'s September application because it was not filed by the March 31, 2008 deadline and she did not qualify for any exception to the filing deadline. The division checked its records by social security number and name, and found that for 2008 the only application it had for Ms. M. was the September application.¹⁰

By notice dated March 24, 2009, Ms. M. was given until April 24, 2009 to send any additional documents or correspondence for consideration in this formal appeal. The PFD Division was given the same deadline. Each party was given until May 4, 2009 to respond to any documents received from the other. The division filed a position statement with attached documents, supplemented with an authorized special filing on June 4; Ms. M. filed nothing.

III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.¹¹ 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.¹² Since Ms. M. is not in one of these categories, the March 31 deadline was absolute for her.

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. 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 an 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.

⁷ Exhibit 3, p. 2 (Request for Informal Appeal).

⁸ *Id.*

⁹ Exhibit 1.

¹⁰ Affidavit of Peter Scott (submitted in response to "Order on Further Proceedings" of June 1, 2009).

¹¹ AS 43.23.011(a); 15 AAC 23.103(a).

¹² AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

Alternatively, 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 request to reapply on or before December 31 of the dividend year if the request to reapply is accompanied by a mailing receipt, a mailing return receipt, or other evidence of *receipt* by the department.¹³

The PFD Division has established that it does not have Ms. M.'s February application. Ms. M. does not have a mailing receipt or return receipt, and she does not have an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original applications to become delayed or lost.

Ms. M. can also prevail by providing "other evidence of receipt by the department." There is no such evidence here.

Ms. M. has indicated that she mailed an application before the March 31 deadline. Assuming she did, however, the Department of Revenue remains bound by its own regulations. Since the department does not have the application—for whatever reason, whether it be an error by the sender, and error by the Postal Service, an error by the PFD Division, or some occurrence beyond the control of any of them¹⁴—the dividend can be paid only if Ms. M. produces one of the specified kinds of evidence, which she does not have. The regulations do not permit any discretion in this situation and Ms. M.'s 2008 PFD application cannot be considered timely.

Government officials can only pay a dividend to people who qualify and who either make a timely application or can show, through a limited range of indisputable means, that they correctly took the steps to make a timely application. For 2008, Ms. M. did not make that showing, and therefore she does not fall among those to whom the officials can make the payment.

IV. Conclusion

Because Ms. M.'s only application on file was submitted after the deadline and she did not meet any of the exceptions to the filing deadline, her application is properly denied. The decision of the Permanent Fund Dividend Division to deny the application of C. J. M. for a 2008 Permanent

¹³ 15 AAC 23.103(h). The department has interpreted this regulation to encompass certain records that are the "substantial equivalent" of a mailing receipt. *See, e.g., In re G.W. & M.E.*, OAH No. 07-0605-PFD (adopted Nov. 14, 2008) and the cases summarized in footnote 27 of that decision (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD070605.pdf>).

¹⁴ Ms. M. could have, in effect, purchased insurance against such an event by sending her application by certified mail. She chose not to do so.

Fund Dividend is AFFIRMED. This decision does not affect her status as a resident or her eligibility for 2009 and future dividends.

DATED this 10th day of July, 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 7th 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.]