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

IN THE MATTER OF	)	
	)	
G. C. P.	)	
	)	Case No. OAH 09-0201-PFD
2008 Permanent Fund Dividend	)	

DECISION

I. Introduction

G. P. submitted a late-filed application for a 2008 permanent fund dividend for the purpose of initiating this appeal process regarding an application she alleges was timely filed. The Permanent Fund Dividend Division ("the division") determined that Ms. P. was not eligible, and it denied the application initially and at the informal appeal level. Ms. P. has requested a formal hearing by written correspondence only.

Review of the written record shows that Ms. P. is not eligible for a 2008 dividend.

II. Facts

Ms. P. was born in Alaska and has lived in the state her entire life. Ms. P. has no plan or desire to live anywhere else. As a seasonal worker in a strained economy, Ms. P. depends on permanent fund dividends to help pay her yearly bills.

Ms. P. asserts that she mailed her 2008 application from the No Name Village post office, as she has always done. Ms. P. has submitted a letter from a friend documenting that she actually filled out the 2008 application, and a letter from another friend stating that Ms. P. is consistent in timely submitting paperwork, such as utility bills.

For unknown reasons, the division does not have a 2008 application on file for Ms. P. Ms. P. speculates that the envelope containing her application was lost by the Postal Service, which is possible. A friend of Ms. P.'s states that she has sent business correspondence by mail that has not been received. It is also possible that the division received the application but then lost it before filing it correctly, and it is also a possibility that in spite of her long history of mailing applications on time, Ms. P. might have lost the application but honestly thought she had mailed, for example if she had mailed a stack of letters and bills and not realized that the application envelope had been dropped or misplaced. It is simply not possible to know for certain what happened to Ms. P.'s application.

While she may have mailed the application by dropping it into a mailbox, it is known that Ms. P. did not obtain a mailing receipt or use certified mail. Thus, she does not have any official documentation of mailing the application.

III. Discussion

At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.[1] 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 responsibility to ensure that an application is timely delivered to the department.[3]

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.

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[1] 15 AAC 05.030(h).
[2] AS 43.23.011.
[3] 15 AAC 23.103(g).

There is no reason in this case to disbelieve Ms. P.'s assertion that she mailed her application on time, other than the fact that the division does not have it on file. But the law requires that a person produce a mailing receipt or a mailing return receipt before the person may reapply for a dividend when an application has been lost. Ms. P. did not obtain a mailing receipt because she has never had problems with the mail in the past. Unfortunately, because she does not have the correct form of proof that she mailed her application, Ms. P. is not eligible for a 2008 dividend in spite of the fact that she is still an Alaska resident and meets all other eligibility requirements.

IV. Conclusion

Because Ms. P. has not produced the required form of evidence to prove timely filing of a dividend application in 2008, the decision of the Permanent Fund Dividend Division to deny the application of G. P. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 5th day of August, 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 3rd day of September, 2009.

By: *Signed*
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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