

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

IN THE MATTER OF	)	
	)	
J. A. L.	)	OAH No. 09-0205-PFD
	)	Agency No. 2008-064-8725
<u>2008 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

J. A. L. applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied Ms. L.’ application initially and at the informal appeal level because it was received after the filing deadline. Ms. L. requested a formal hearing which was held on May 18, 2009. Ms. L. participated in person and Kimberly Colby represented the division by telephone from Juneau. The division’s denial is affirmed because the only application on file was submitted late and Ms. L. has not provided proof of timely filing as required by law.

**II. Facts**

On December 12, 2008, the division received Ms. L.’ 2008 PFD application dated December 8, 2008.<sup>1</sup> Ms. L. testified that the application on file with the division is not her original application, but one she submitted in order to get a hearing. Ms. L. remembers receiving her application booklet in the mail in early January 2008 and she believes she completed and sent in her application soon after that. However, she did not mail it “return receipt requested” and the division has no record of having received the original application. Ms. L. testified that she is very methodical about filing her application every year and because of her lengthy residency in Alaska believes she is entitled to the dividend. On cross examination, Ms. L. confirmed that she was neither a member of the military nor was she disabled on March 31, 2008.

**III. Discussion**

The only impediment to Ms. L. receiving a 2008 PFD is the timeliness of her application. It is an applicant’s responsibility to ensure that her 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.  
<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> 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> Because Ms. L. was neither a member of the armed forces nor disabled, the March 31 deadline was absolute for her.

The only 2008 PFD application on file for Ms. L. is the application the division received on December 12, 2008. Ms. L. asserts that this is a reapplication. The regulation addressing applications received after the deadline is found at 15 AAC 23.103(h), which states that if an application was timely mailed but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year. The applicable regulation provides that a reapplication will be considered timely filed if there is a mailing receipt or a mailing return receipt showing the original application was mailed between January 1 and March 31 of the dividend year.<sup>8</sup> Ms. L. does not have a receipt showing the original application was timely mailed.

There is another subsection of 15 AAC 23.103, that 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....

Ms. L. was a credible witness and there is no reason not to believe her testimony. However, the only application received by the division was mailed after the filing deadline. In this situation, there are only two ways around the late postmark: either 1) an official statement from the Postal Service showing that incorrect handling or delay by the Postal Service caused the late postmark or

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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 23.103(h).

2) a mailing receipt showing the original application was mailed between January 1, 2008, and March 31, 2008. Ms. L. has neither of these required pieces of proof. The regulation is absolute and does not permit the administrative law judge to exercise discretion in these cases. Without the evidence required by the regulation, the administrative law judge may not grant the reapplication.

**IV. Conclusion**

The decision of the Permanent Fund Dividend Division to deny the application of J. A. L. for the 2008 permanent fund dividend is AFFIRMED. The only application on file with the division was submitted after the deadline and Ms. L. did not provide proof of mailing as required by 15 AAC 23.103(g) or (h). This decision does not affect Ms. L.’ status as a resident or her eligibility for 2009 and future dividends.

DATED this 23rd day of September, 2009.

By: Signed  
Kay L. Howard  
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 21st day of October, 2009.

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

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