

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
FROM THE COMMISSIONER OF REVENUE**

In the Matter of)	
)	
E. R.)	OAH No. 09-0221-PFD
)	Agency No. 2008-063-1029
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

E. R. appeals the Permanent Fund Dividend Division’s determination that he was ineligible for a 2008 permanent fund dividend (PFD) because he did not timely file an application. Mr. R. requested a formal hearing by correspondence. The Notice of Hearing by Correspondence advised the parties that they had until May 20, 2009, to submit any additional documents or explanation that they would like to have considered in resolving their appeal. It also advised the parties that they had until June 1, 2009 to submit any written response to any material submitted by the other side. On May 20, 2009, the division filed additional documents and its position statement. Included in the division’s submission were documents received by the division on May 15, 2009, from Mr. R. and a letter with accompanying form requesting certification from Mr. R.’s health care provider that he was disabled.¹ On June 1, 2009, the record closed without further submission from either party.

On June 12, 2009, the division presented to the Office of Administrative Hearings a late filed submission to the record – the letter the division submitted to Mr. R.’s health care provider with a hand written “no” and an unidentified initial by the “no.” The division’s submission to the record was treated as a request to reopen the record and accept the submission. The record was reopened and Mr. R. was given an opportunity to respond to the division’s submission.² In response Mr. R. submitted a two page document from the Social Security Administration. The record closed July 1, 2009. The division’s denial is affirmed because the application was filed late and did not qualify for any exception to the deadline.

II. Facts

Mr. R. signed and dated his 2008 PFD application April 18, 2008.³ It was received by the division on April 21, 2008.⁴ The division denied the application because it was not received

¹ Exhibit 7; Exhibit 8.

² Order Accepting Late Filed Submission, Reopening The Record And Permitting Response (June 15, 2009).

³ Exhibit 1 at 1.

or postmarked on or before the March 31, 2008 filing deadline. In response, by letter dated January 7, 2009, Mr. R. wrote that he has been a resident of Alaska since September 2000 and believes he is entitled to a dividend, and he requested the appropriate appeal forms.⁵ On January 29, 2009, Mr. R. again wrote requesting an appeal form.⁶ The record does not contain an informal appeal from Mr. R. on a division appeal form.

On March 31, 2009, the division issued its Informal Appeal Decision denying Mr. R.'s appeal. The Informal Decision states that the denial was based on Mr. R.'s "Request for Informal Appeal form," his application, and any supporting documentation.⁷ The reason given for denial was failure to timely file his 2008 PFD application.

On April 10, 2009, Mr. R. using a division form filed a Request for Formal Hearing.⁸ In support of his appeal Mr. R. agrees that his application was untimely. However, he explained that the application "was not forwarded to my temporary address where I was living in January '08. I had an MRI on my neck and back (documents enclosed) I returned to Alaska on April 8th '08 and that's why I had not filed before Mar. 31st."⁹ Mr. R.'s supporting documentation corroborates his explanation and reveals that Mr. R. had an MRI on January 25, 2008.

On May 15, 2009, Mr. R. filed an additional statement and records to support his claim that he met residency requirements for the 2008 PFD.¹⁰ By way of further explanation, Mr. R. emphasized that his application was not forwarded and that while he was away he was seeing a doctor. He further explained that he has been disabled since 1989. In an attempt to determine whether Mr. R. would qualify for late filing because he was disabled as defined by the PFD program, the division sent a Licensed Health Care Provider's Certification of Disability form to Mr. R.'s Alaska physician.¹¹ The only document received by the division in response to its inquiry was the cover letter accompanying the form with a handwritten "no" at the bottom and an indiscernible initial.¹²

⁴ Exhibit 1 at 5.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ *Id.* at 2.

¹⁰ Exhibit 7.

¹¹ Exhibit 8.

¹² Division June 12, 2009 Submission to the Record.

In response, Mr. R. submitted a computer printout with a stamp that reads “Denver Co SSA FO 882” dated March 6, 2009. The printout is for Mr. R.¹³ It indicates that Mr. R. receives monthly payments and is disabled.

III. Discussion

This case begins with the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year. Mr. R. does not dispute that his application was filed late. Rather, he argues that the late filing should be excused because it was never forwarded to him and because he is disabled.

Mr. R.’s first argument, that his application was never forwarded to him, is without merit. It is the division’s obligation to “prescribe and furnish an application form for claiming” a dividend.¹⁴ The division fulfills its obligation by making applications available to the public at designated distribution centers as well as on line. “It is an individual’s responsibility to ensure that an application is timely delivered to the department.”¹⁵

Failure to have the 2008 PFD application forwarded did not interfere with Mr. R.’s ability to timely file. Mr. R. had other avenues available to him to obtain an application other than the one that was originally mailed to him in January of 2008. He could have contacted the PFD office and requested an application, he could have filed online or he could have asked a friend from Alaska to mail him an application. Therefore, the fact that Mr. R.’s application was never forwarded to him is not persuasive or compelling. Moreover, as discussed below, it does not fit within one of the exceptions that will excuse a late filed application.

The statutes and regulations governing the PFD program provide very narrow exceptions to the filing deadline. The statute itself provides only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services and eligible for hostile fire or imminent danger pay.¹⁶ Mr. R. has not claimed he that in 2008 he was a member of the armed forces.

There is an additional exception in a department regulation, 15 AAC 23.133(d), that permits late applications from individuals who were prevented from filing on time by a

¹³ R. June 18, 2009 Submission. This two page document was submitted by the division upon its receipt from Mr. R. The print out reveals it is for an individual of the same name with the same social security number as Mr. R. Therefore, it is reasonable to conclude the printout is a record associated with Mr. R.

¹⁴ AS 43.23.015(b).

¹⁵ 15 AAC 23.103(g).

¹⁶ AS 43.23.011(b), (c).

disability. Either the individual or an authorized representative may make the late application.¹⁷ To qualify for that exception, the applicant must file a Form D, which is available after the filing deadline, and provide a certification from a licensed health care provider that includes:

- (1) confirmation that the individual was disabled on March 31 of the dividend year for which the individual is applying; and
- (2) a statement explaining why the disability prevented the applicant from timely filing an application during the application period¹⁸

“‘[D]isabled’ means physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment....”¹⁹ Mr. R.’s June 18, 2009 post hearing submission is insufficient evidence upon which to establish that Mr. R. met the PFD statutory definition of disabled during the 2008 application period. Although Mr. R.’s submission is not authenticated as such, it appears to be a print out from the Social Security Administration. The PFD program’s definition of disability is very precise and is the controlling definition. Qualifying for Social Security Disability benefits is not proof of disability for purposes of the PFD program.

The division sent the appropriate form to Mr. R.’s physician and rather than a completed form, its cover letter with the notation “no” and an initial was returned. The letter is of little persuasive value as it is unknown who wrote “no” or what the “no” was referring to. Regardless, it is Mr. R.’s burden to carry and he has not provided the necessary certification of disability required by regulation. The division’s denial of his 2008 PFD application should be affirmed.

IV. Conclusion

Mr. R. was not disabled as defined by AS 43.23.095(2). The decision of the division to deny E. R.’s 2008 PFD application as untimely is AFFIRMED.

DATED this 1st day of July, 2009.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

¹⁷ 15 AAC 23.133(d).

¹⁸ *Id.*

¹⁹ AS 43.23.095(2).

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 13th day of August, 2009.

By: Signed
Signature
Virginia Blaisdell
Name
Director, Administrative Services Division
Title

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