

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

In the Matter of :)	
)	
E. N. H., SR.)	
)	OAH No. 09-0225-PFD
<u>2008 Alaska Permanent Fund dividend</u>)	DOR No. 2008-064-8447

DECISION

I. Introduction

E. N. H., Sr., mailed an application for a 2008 Alaska Permanent Fund dividend but the Permanent Fund Dividend Division does not have the application on file. Mr. H. submitted a timely request to reapply, which was denied. Mr. H. filed a timely appeal and requested a hearing by correspondence.

Because Mr. H.'s request to reapply is not accompanied by the required documentation of his initial application, the division's decision is sustained.

II. Facts

E. N. H., Sr. is a long-time Alaska resident who lives in Chitna. He has routinely timely applied for and received an annual Alaska Permanent Fund dividend. Mr. H. is 85 years old and he depends on the income from his dividend for his support.

Mr. H. filled out an application for a 2008 dividend and mailed it to the division prior to March 31, 2008. The division has no timely application from Mr. H. on file, and Mr. H. has no mailing receipt, return receipt, or other documentary evidence that he timely mailed his application. Several other Chitna residents reported to Mr. H. that their applications had been denied by the division even though they had timely mailed their applications, likely because the applications had been lost in the mail.

III. Discussion

An application for a permanent fund dividend must be filed during the period beginning January 1 and ending March 31 of the dividend year.¹ The department has authority to prescribe application procedures by regulation.² The department's regulations state that "[a]n application must be received by the department or postmarked during the application period...to be

¹ AS 43.23.011(a).

² AS 43.23.055(2).

considered timely.”³ If an individual timely submits an application, but the division does not have the application on file, the individual may submit a request to reapply.⁴ A request to reapply when a timely submitted mailed application is not on file must be accompanied specified evidence that an application was timely filed: either a mailing receipt, or a mailing return receipt documenting delivery to the department or other evidence of receipt by the department.⁵

Mr. H.’s recollection is that he timely mailed his application. He believes the application was somehow lost in the mail, because several other Chitna residents have told him that they, too, had mailed in timely applications that were not received by the division. There is no reason to believe that Mr. H.’s recollection is in error, and thus the preponderance of the evidence is that he mailed the application on time.

The division’s regulations place the responsibility “to ensure that an application is timely delivered” on the applicant.⁶ Mr. H.’s application may have been lost in the mail, it may have been misdelivered, or it may have been misfiled or lost by the division. Whatever happened, the division does not have the application on file, and Mr. H. does not have any documentary evidence that he timely mailed the application. Under the facts of this case, the division’s regulations mandate the denial of the dividend: no timely application is on file, and the request for reapplication is not supported by the evidence required by law.

IV. Conclusion

Mr. H. is ineligible for a 2008 dividend because no timely application is on file, and he does not have the evidence necessary to reapply. The division’s denial of his application and request to reapply is therefore sustained.

DATED August 24, 2009.

Signed

Andrew M. Hemenway
Administrative Law Judge

³ 15 AAC 23.103(a).

⁴ 15 AAC 23.103(h).

⁵ 15 AAC 23.103(h)(1), (2). This regulation has been amended, effective to applications initially filed after January 1, 2009. Under the revised regulation, a request to reapply may, only once in an individual’s lifetime, be supported by an affidavit. 15 AAC 23.103(h)(4) (Register 188, eff. 1/1/2009).

⁶ 15 AAC 125.103(g).

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 28 day of September, 2009.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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