

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

In the Matter of :)	
)	
V. C. H.)	
)	OAH No. 09-0264-PFD
<u>2008 Alaska Permanent Fund dividend</u>)	DOR No. 2008-063-576

DECISION

I. Introduction

V. C. H. filed an application for a 2008 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the applications as untimely. Ms. H. filed a timely appeal and requested a hearing. The case was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on June 16, 2009. Ms. H. participated, and the division was represented by Kimberly Colby.

The division's decision is affirmed.

II. Facts

V. C. H. filled out her application form for the 2008 Alaska Permanent Fund dividend on March 29, 2008. On the evening of March 30, 2008, Ms. H. drove to the post office at the Anchorage airport to mail the application form and deposited the application in a bin being carried by a postal worker who was picking up mail from vehicles at that location.

The Permanent Fund Dividend Division received the application on April 3; the envelope was postmarked on April 1, 2008. The postal service is unable to explain why, if the envelope was deposited prior to April 1, it was not postmarked prior to that date.

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 considered timely.... An application mailed before, but postmarked after, the end of the

¹ AS 43.23.011(a).

² AS 43.23.055(2).

application period is not timely filed.”³ Consistently with that regulation, the department will deny an application postmarked after March 31 of the dividend year unless the applicant “provides the department with an official statement...that describes the specific circumstances under which the postal service incorrectly posted the...application or caused a delay in posting.”⁴

In this case, Ms. H. testified that she hand delivered her application to a postal service employee prior to the filing deadline. The postal service’s letter of explanation states that the postal service is unable to determine what happened to this particular envelope. The service observes that it sometimes misplaces envelopes:

On rare occasions, a letter may be left in a container that we though had been thoroughly emptied, or it can fall under equipment and remain undetected. In routine equipment checks at our facilities, usually mail that has been mislaid in this way will be found and delivered after a short delay. For PFD applications and income tax returns, our employees would notify their supervisors to ensure the mail receives a ‘Delayed in Postal Handling’ stamp. Since your letter was postmarked on April 1st, its whereabouts on March 31st is a mystery to us.⁵

Assuming that Ms. H. filed late prior to the deadline, and the postal service delayed in postmarking it, the application was untimely: Alaska law specifically provides that an application mailed prior to the deadline, but postmarked on April 1, is untimely. Only if the applicant establishes that the late postmark was the result of an error by the postal service is a late postmark acceptable. Ms. H. failed to establish that the late postmark was the result of an error by the postal service.

IV. Conclusion

Ms. H.’ 2008 application was untimely. The division’s denial of the application is therefore AFFIRMED.

DATED June 16, 2009

Signed

Andrew M. Hemenway
Administrative Law Judge

³ 15 AAC 23.103(a).

⁴ 15 AAC 23.103(g).

⁵ Ex. 4, p. 8.

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 15th day of July, 2009.

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

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