

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

IN THE MATTER OF	)	
	)	
R. P. P.	)	OAH No. 09-0267-PFD
	)	Agency No. 2009-036-3144
<u>2008 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

R. P. P. applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied Mr. P.’ application initially and at the informal appeal level because it was received after the filing deadline. Mr. P. requested a formal hearing by correspondence. The division’s denial is affirmed because the only application on file was submitted late and Mr. P. has not provided proof of timely filing as required by law.

**II. Facts**

On January 23, 2009, the division received Mr. P.’ 2008 PFD application dated January 17, 2009.<sup>1</sup> Mr. P. indicated in his appeal that the application on file with the division is not his original application. He stated that he mailed the original application before March 31, 2008, as he has done for many years.<sup>2</sup> Mr. P. added that he has lived in No Name City since 1991 and is also an honorably discharged Korean War veteran.<sup>3</sup> Mr. P. is, in his words, “real deaf” and does not have a telephone,<sup>4</sup> although he is not disabled in such a way that would prevent him from filing his PFD application.<sup>5</sup> One of Mr. P.’ verifiers, L. A., submitted a statement that says she has known him for at least twenty years, and that “I have also signed R.’s dividend papers almost every year. I remember signing last year’s [2008] papers and remember him saying he was going to mail his papers right off.”<sup>6</sup>

By notice dated May 13, 2009, Mr. P. was given until June 13, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 3 at pg. 2.

<sup>3</sup> Exhibit 3 at pg. 5.

<sup>4</sup> *Id.*

<sup>5</sup> In the division’s PFD Position Statement at pg. 2, PFD Specialist Kim Colby describes a May 26, 2009, telephone conversation with Mr. P. friend, S. S., who stated Mr. P. is not disabled. Similarly, on May 28, 2009, Ms. Colby spoke with Mr. P., who indicated he is hard of hearing but made no suggestion he is disabled.

<sup>6</sup> Exhibit 3 at pg. 7.

same deadline. Both were given until June 23, 2009, to respond to any documents received from the other. The division filed a position statement; Mr. P. did not file any additional documents.

### **III. Discussion**

The only impediment to Mr. P. receiving a 2008 PFD is the timeliness of his application. It is an applicant's responsibility to ensure that his application is timely delivered to the division.<sup>7</sup> The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.<sup>8</sup>

A mailed application must be postmarked during the application period to be considered timely filed.<sup>9</sup> The legislature provided very few exceptions to this bright line rule.<sup>10</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>11</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>12</sup> Mr. P. was not a member of the armed forces nor was he disabled on March 31, 2008, so that deadline was absolute for him.

The only 2008 PFD application on file for Mr. P. is the application the division received on January 23, 2009. Mr. P. asserts that this was his second application. 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>13</sup> Mr. P. 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

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<sup>7</sup> 15 AAC 23.103(g).

<sup>8</sup> AS 43.23.011(a).

<sup>9</sup> 15 AAC 23.103(a).

<sup>10</sup> AS 43.23.011(b), (c); AS 43.23.055(3), (7).

<sup>11</sup> AS 43.23.011(b), (c).

<sup>12</sup> 15 AAC 23.133.

<sup>13</sup> 15 AAC 23.103(h).

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....

Mr. P.' statement was credible and there is no reason not to believe his version of events surrounding his application for the 2008 PFD. However, the only application received by the division was mailed after the filing deadline. In this situation, there are 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 2) a mailing receipt showing the original application was mailed between January 1, 2008, and March 31, 2008. Mr. P. has neither of these required pieces of proof. The regulation is absolute and does not permit the administrative law judge to exercise discretion and 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 R. P. P. for the 2008 permanent fund dividend is AFFIRMED. The only application on file with the division was submitted after the deadline and Mr. P. did not provide proof of mailing as required by 15 AAC 23.103(g) or (h). This decision does not affect Mr. P.' status as a resident or his eligibility for 2009 and future dividends.

DATED this 21st 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.]