

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

IN THE MATTER OF)	
)	
B. A. T.)	OAH No. 09-0268-PFD
)	Agency No. 2008-064-8670
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

B. A. T. applied for the 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that Mr. T. had filed his application after the filing deadline and for that reason it denied his application initially and at the informal appeal level. He requested a formal hearing which was held on June 18, 2009. Mr. T. participated and represented himself. PFD Specialist Kimberly Colby participated telephonically and represented the division. The division's denial is affirmed because Mr. T.'s application was filed late and did not qualify for any exception to the deadline.

II. Facts

On December 9, 2008, the division received an application from Mr. T. dated November 17, 2008.¹ This is the only 2008 PFD application the division has for Mr. T.² At the bottom of the application Mr. T. wrote "you lost my application."³ Mr. T. alleges that the December 2009 application is a reapplication. The unchallenged testimony is that Mr. T. mailed his original application in March 2008 from the Wasilla post office in the envelope provided by the division with the appropriate amount of postage attached. He did not get a mailing receipt. Mr. T. recalls receiving a PFD every year since 1984. He has always mailed his applications and has never had a problem in the past.⁴

In the 1990's Mr. T. defaulted on a student loan. His recent PFDs have all gone to pay back that loan. This is the first year since he defaulted that he was due to receive the PFD proceeds.

¹ Exhibit 1.
² Exhibit 7.
³ Exhibit 1; T. Testimony.
⁴ T. Testimony.

III. Discussion

It is an applicant's responsibility to ensure that their application is timely delivered to the division.⁵ The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.⁶

A mailed application must be postmarked during the application period to be considered timely filed.⁷ The legislature provided very few exceptions to this bright line rule.⁸ 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.⁹ 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.¹⁰ Mr. T. has not alleged that he was in the military or disabled, so the March 31 deadline was absolute for him.

The only 2008 PFD application on file with the division for Mr. T. is the application received on December 9, 2008. The regulation addressing applications received after the deadline is found at 15 AAC 23.103. Under 15 AAC 23.103(h), 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. However, the "reapplication" may only 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.¹¹ Mr. T. did not obtain a receipt.

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....

⁵ 15 AAC 23.103(g).

⁶ AS 43.23.011(a).

⁷ 15 AAC 23.103(a).

⁸ AS 43.23.011(b), (c); AS 43.23.055(3), (7).

⁹ AS 43.23.011(b), (c).

¹⁰ 15 AAC 23.133.

¹¹ 15 AAC 23.103(h).

Mr. T. has not produced an official statement from the Postal Service showing that incorrect handling or delay by the Postal Service caused the late postmark.

Here, Mr. T. has neither of the regulatorily required pieces of proof. The regulation does not permit the division or the administrative law judge to exercise discretion in these cases. Without the regulatorily prescribed evidence, the regulation does not permit the administrative law judge to grant the applications.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the application of B. A. T. for the 2008 permanent fund dividend is AFFIRMED. The only application on file with the division was submitted after the deadline and he did not meet the requirements of 15 AAC 23.103(g) or (h) with respect to his prior application. This decision does not affect his status as a resident or his eligibility for 2009 and future dividends.

DATED this 22nd day of June, 2009.

By: Signed _____
Rebecca L. Pauli
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 20th day of July, 2009.

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

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