

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

IN THE MATTER OF)	
)	
R. D. G. and)	OAH No. 09-0277-PFD
A. Z. G.)	Agency No. 2008-063-0483
(minor child))	Agency No. 2008-063-0484
)	
<u>2008 Permanent Fund Dividends</u>)	

DECISION

I. Introduction

R. D. G. and his minor child, A. Z. G., applied for the 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that the only applications the G.s had on file with the division were filed after the filing deadline. For this reason it denied their applications initially and at the informal appeal level. Mr. G. requested a formal hearing which was held on June 22, 2009. Mr. G. participated in person. PFD Specialist Peter Scott participated by telephone and represented the division. The division's denial is affirmed because the only applications on file were submitted late and Mr. G. has not provided the proof of timely filing required by law. However, the minor child, A. Z. G. may apply for a 2008 dividend when she reaches the age of eighteen, so long as she does so before she reaches the age of twenty.¹ This opportunity will be lost after A. turns twenty.

II. Facts

On April 3, 2008, the division received the G.s' 2008 PFD applications dated January 2, 2008.² It arrived in an envelope postmarked April 1, 2008.³ Mr. G. testified that he has received a PFD for over 20 years and is aware of the filing deadline. He realized the Friday before the filing deadline that he had not mailed their applications. On Sunday night, March 30, 2008, he drove to the post office on Northern Lights and Minnesota and placed the envelope with their applications in the outside mail box. He did not get a mailing receipt. Mr. G. noted that it was 11:15 p.m. and recalled thinking that there was plenty of time to get the envelope postmarked and before the filing deadline. He was shocked when he found out their applications were not timely filed. This is not

¹ 15 AAC 23.133(b)-(c).
² Exhibit 1.
³ Exhibit 1 at 5.

the first time he has had a problem with his application being timely filed. Three years ago his applications were lost by the division and he was allowed to re-file.⁴

Mr. G. has been to the post office several times to try and figure out what happened, but the post office employees were unwilling to write a letter explaining why an envelope deposited in the mail on Sunday night was not postmarked until Tuesday. One possible explanation offered by Mr. G. is that the post office misplaced the envelope and mailed it to the division after the filing deadline. However, he admits he has no evidence to offer in support of his theory.

Mr. G. asks that all the facts be considered when deciding this appeal. He argues that there is no reason he would not have mailed the application in a timely manner. Moreover, because he knows it must be postmarked by March 31, why would he even try to mail the application after the filing deadline? Finally, Mr. G. inquired into whether he and A. would still receive that portion of the PFD referred to as the Alaska resource rebate.

III. Discussion

The only impediment to the G.s receiving a 2008 PFD is the timeliness of their applications. It is an applicant's responsibility to ensure that his or her 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. G. was not a member of the armed forces nor was he disabled so the March 31 deadline was absolute for him.

The only 2008 PFD applications on file with the division for the G.s are their applications postmarked April 1, 2008. The regulation addressing applications received after the deadline is

⁴ The record does not contain a more detailed explanation of what occurred at that time. Regardless, the prior incident is not relevant as this proceeding is limited to the 2008 PFD and whether it was timely filed.

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.

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. 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.¹¹ Mr. G. 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 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. G. testified with conviction regarding the mailing of their applications. However, the only applications received by the division were mailed after the filing deadline. In this situation, there were two ways around the late postmark: producing 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. G. has neither of the regulatorily required pieces of proof. The regulation is absolute and does not permit the administrative law judge to exercise discretion in these cases. Without the regulatorily prescribed evidence, the administrative law judge may not grant the application.

Mr. G. inquired whether his ineligibility for a 2008 PFD included the portion of the dividend designated as the "Alaska resource rebate." Unfortunately, the answer is yes.

Through legislation passed in 2008, Alaskans eligible for the 2008 PFD were given \$1200 in addition to the dividend amount calculated in the usual fashion.¹² In pertinent part, the legislation states "[t]o provide residents of the state with an Alaska resource rebate, *the amount of the 2008*

¹¹ 15 AAC 23.103(h).

¹² See 2008 Sess. Law of Alaska, Fourth Special Session, ch. 2, § 5.

permanent fund dividend shall be increased.”¹³ The plain language of the law shows that the \$1200 resource rebate increased the amount of the PFD. Though the purpose of adding this fixed amount to the calculated dividend amount was special—i.e., to provide residents extra dividend dollars in times of high energy costs—the law does not separate the \$1200 from the rest of the PFD.

A. Z. G. may apply for a 2008 dividend when she reaches the age of eighteen, so long as she does so before she reaches the age of twenty.¹⁴ This opportunity will be lost after A. turns twenty. Therefore, Mr. G. should remind A. to apply immediately after her eighteenth birthday.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the applications of R. D. G. and A. Z. G. for the 2008 permanent fund dividend is AFFIRMED. Their applications on file with the division were submitted after the deadline and they did not meet the requirements of 15 AAC 23.103(g) or (h) with respect to their applications. The Alaska resource rebate increased the total amount of the 2008 PFD. Because Mr. G. is not eligible for the 2008 PFD, he is not eligible for that portion of the PFD designated as the “Alaska resource rebate.” This decision does not affect their status as residents or their eligibility for 2009 and future dividends. This decision does not affect A.’s ability to file for a 2008 PFD upon turning eighteen.

DATED this 23rd day of June, 2009.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

¹³ *Id.* at ¶ 5(a) (emphasis added).

¹⁴ 15 AAC 23.133(b)-(c).

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.]