

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

In the Matter of)	
)	
S. A. S.)	OAH No. 09-0322-PFD
)	Agency No. 2008-063-0686
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

S. A. S. appeals the Permanent Fund Dividend Division’s (“division”) determination that he is ineligible for a 2008 PFD because his application was not timely filed. Mr. S. requested a formal hearing by correspondence. The division’s denial is affirmed because the application was filed late and Mr. S. did not qualify for any exception to the deadline.

II. Facts

Mr. S. lives in No Name, Alaska; he is 50 years old. He signed his PFD application on March 25, 2008,¹ and sometime thereafter deposited it at the local post office to be sent to Juneau. The envelope was postmarked in Kenai on April 5, 2008,² and it was received by the division on April 7, 2008.³

The division denied Mr. S.’s application on January 16, 2009, for the reason that it was postmarked after March 31, 2008.⁴ Mr. S. filed an informal appeal on February 20, 2009.⁵ He stated that he could not get to the post office on the day he signed his application, March 25th, but he dropped it in the night deposit box “that Fri or Sat night”⁶ Mr. S. added that he has a chronic back problem and can only get to the post office once or twice a month. Mr. S. asserted he is always on top of his paperwork and cannot understand why his application was not postmarked until April 5, 2008.⁷

On March 4, 2009, the PFD technician working on Mr. S.’s appeal wrote him two letters, one inquiring whether Mr. S. believes the post office “incorrectly posted or caused a delay in the posting” of his application.⁸ Second, the technician asked whether Mr. S. may have met the

¹ Exhibit 1 at pg. 1.
² Exhibit 1 at pg. 3.
³ *Id.*
⁴ Exhibit 2 at pg. 1.
⁵ Exhibit 3 at pg. 1.
⁶ Exhibit 3 at pg. 2.
⁷ *Id.*
⁸ Exhibit 4 at pg. 1.

definition of “disabled” on March 31, 2008, and if so, whether he was not able to file his application on time.⁹ Mr. S. was given until April 4, 2009, to answer the division’s questions,¹⁰ but he did not respond. Other than the statement that he has a chronic back problem, there is no evidence in the record that Mr. S. is disabled.

On April 30, 2009, the division issued an Informal Appeal Decision denying his application for a 2008 PFD because he did not file a timely application and he did not qualify for one of the exceptions for filing outside the filing period.¹¹

Mr. S. appealed and requested a hearing by correspondence. By notice dated June 17, 2009, Mr. S. was given until July 17, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both were given until July 27, 2009, to respond to any documents received from the other. The division filed a position statement; Mr. S. did not file any additional documents.

III. Discussion

The only impediment to Mr. S. 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.¹² The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.¹³

A mailed application must be postmarked during the application period to be considered timely filed.¹⁴ The legislature provided very few exceptions to this bright line rule.¹⁵ 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.¹⁶ 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.¹⁷ Mr. S. was not a member of the armed forces nor was he disabled on March 31, 2008, so that deadline was absolute for him.

Whether a mailed application is considered timely posted is established by a regulation, 15 AAC 23.103(g), the relevant portion of which reads:

⁹ Exhibit 4 at pg. 2.

¹⁰ *Id.*

¹¹ Exhibit 5.

¹² 15 AAC 23.103(g).

¹³ AS 43.23.011(a).

¹⁴ 15 AAC 23.103(a).

¹⁵ AS 43.23.011(b), (c); AS 43.23.055(3), (7).

¹⁶ AS 43.23.011(b), (c).

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. . . .

The Department of Revenue is bound by its own regulations. The regulations leave neither the division nor the administrative law judge any discretion in this matter.

Mr. S. appears to sincerely believe that he mailed his 2008 PFD application before March 31, 2008, but 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. S. has neither of these required pieces of proof. The regulation is absolute and does not permit the administrative law judge to exercise discretion in these cases. Without the evidence required by the regulation, Mr. S. is not entitled to a 2008 PFD.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the application of S. A. S. for the 2008 permanent fund dividend is AFFIRMED. The only application on file with the division was postmarked after the deadline and Mr. S. did not provide proof of mailing as required by 15 AAC 23.103(g) or (h). This decision does not affect Mr. S.'s 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.]