

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

In the Matter of:)	
)	
C. E. R.)	OAH No. 09-0483-PFD
)	Agency No. 2008-063-0499
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

C. R. filed for her 2008 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (“division”) denied her application initially and at the informal appeal level because it was not received or postmarked by the application deadline. Ms. R. requested a formal hearing which was held on November 16, 2009. Initially, Ms. R. could not be reached by phone, and the hearing was held with only the Division’s representative. Ms. R. called in shortly thereafter, and a complete hearing was held with all parties present.

The division’s denial is affirmed because the application was filed late. Ms. R. did not provide proof of timely filing and she did not qualify for any exception to the deadline.

II. Facts

Ms. R. mailed her application on March 31, 2009. She mailed three envelopes at about 4:45 that afternoon. One contained her husband’s application, another contained her son’s application, and the third contained her own application along with her daughter’s application. According to Ms. R., her husband’s and her son’s applications were all approved. Only the applications in the third envelope were denied for having a late postmark date.¹

The Soldotna post office was still open when Ms. R. mailed these envelopes. She did not go into the lobby because it was crowded and the parking lot was full; she used the outside box instead. Ms. R. believed that the outside box would be emptied frequently throughout the day because it was the last day for having PFD applications postmarked.

The envelope with Ms. R.’s application was postmarked in Anchorage on April 1, 2008.² Ms. R. testified that she was not in Anchorage on April 1st. She further stated that she always mailed her applications from Soldotna and had been doing so for 22 years. After learning that

¹ Ms. R. testified that she was told by the division that a separate appeal need not be filed for her daughter and that her daughter would be eligible or not based on the decision on her own application. This decision only addresses the timeliness of Ms. R.’s application.

² Exhibit 1, page 3.

her application was denied, she spoke with someone in the Soldotna post office who told her that this sort of problem had occurred before. He was not able to give her a written statement to that effect, and directed her to someone in Anchorage. Ms. R. stated that she wrote to the Anchorage address, but did not receive a response.

III. Discussion

The PFD law is, in some areas, extremely strict. The division often has no discretion to approve an application that does not meet the strict requirements of the law and regulations. It is an applicant's responsibility to ensure that his or her application is timely delivered to the division.³ The period for applying for a dividend begins January 1 and ends on March 31 of the dividend year.⁴

A mailed application must be postmarked during the application period to be considered timely filed.⁵ The legislature provided very few exceptions to this bright line rule.⁶ 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.⁷ 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.⁸ There is no evidence in the record that Ms. R. was a member of the armed forces or was disabled on March 31, 2008, so that deadline was absolute for her.

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

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. . . .

³ 15 AAC 23.103(g).

⁴ AS 43.23.011(a).

⁵ 15 AAC 23.103(a).

⁶ AS 43.23.011(b), (c); AS 43.23.055(3), (7).

⁷ AS 43.23.011(b), (c).

⁸ 15 AAC 23.133.

Ms. R.'s testimony was credible. There is no reason why she would mail two envelopes from Soldotna, and not mail the third envelope in Soldotna as well. However, in situations like this, where the postmark indicates the application was posted late, there are only 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. Ms. R. does not have a mailing receipt, and despite her best efforts, Ms. R. was not able to obtain a statement from the Postal Service. While it appears that this failure was beyond her control, the Department of Revenue is bound by its own regulations. Neither the division nor the administrative law judge has any discretion in this matter. Without the required evidence, Ms. R. is not entitled to a 2008 PFD.

IV. Conclusion

Ms. R.'s application was postmarked one day after the close of the application period. Because she did not obtain a mailing receipt and she was not able to produce a statement from the United States Postal Service explaining the circumstances of this late postmark, she is not entitled to receive a 2008 dividend. The division's decision denying her application is AFFIRMED.

DATED this 31ST day of December, 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 29th day of January, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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