

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

In the Matter of:	)	
	)	
S.-R. M.	)	
	)	OAH No. 10-0158-PFD
<u>2008 Permanent Fund Dividend</u>	)	Agency No. 2009-065-8803

**DECISION**

**I. Introduction**

S.-R. M. applied for a 2008 Permanent Fund Dividend (PFD). The only application received by the Permanent Fund Dividend Division (Division) was dated September 10, 2009.<sup>1</sup> The Division denied this application because it was not postmarked or received prior to the end of the application period, March 31, 2008.<sup>2</sup> Mr. M. states that he had attempted to file electronically and did in fact file by mail in January of 2008. He believes he should be considered eligible to receive a 2008 PFD because he is not responsible for the failure of his application to either arrive on time or to be processed on time.

A hearing was held on June 18, 2010. S. M. appeared in person and testified on his own behalf. His father G. M. also appeared in person and testified. PFD Specialist Peter Scott represented the Division by phone. Exhibits 1 – 4 and 6 – 9 were admitted without objection.<sup>3</sup> The Division correctly denied Mr. M.’s application for the reasons discussed below.

**II. Facts**

G. M. provided most of the sworn testimony in this matter, but S. M. testified that what his father said was accurate. In addition, the testimony at the hearing largely confirmed what was already presented in the appeal paperwork.

Based on the testimony at the hearing and on the statements made in Exhibit 3, pages 3 - 4, the following facts have been established. On January 27, 2008, the M. family filed PFD applications on line. This included an attempt to file an application for S. M. Because S. had recently turned 18, however, they were unable to complete his application. They encountered a

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2, page 1.  
<sup>3</sup> There was no exhibit 5.

problem with establishing a My Alaska account required for an e-signature on the PFD application.

Having encountered this problem, the M.s completed a paper application for S. S. signed that application, and G. M. delivered it to the post office the next day – January 28, 2008. G. M. brought the envelope containing the application inside the post office so there would be no doubt that it was actually mailed and not forgotten in the car or elsewhere.

The only application in the Division’s records is Exhibit 1 which is dated Sept 10, 2009, well after the March 31, 2008 deadline. The M.s filed that application only as a means to have the Division look for their earlier applications and to make this appeal possible. Neither the September 2009 application nor the subsequent appeal paperwork included any documents supporting the M.s’ testimony that an earlier application had been made.

### **III. Discussion**

An Alaska resident must submit an application in order to be eligible to receive a PFD.<sup>4</sup> With some limited exceptions; the application must actually be received by the Division or postmarked during the application period.<sup>5</sup> For the 2008 PFD, the application period began January, 1, 2008 and ended on March 31, 2008.

Division regulations place the burden on the applicant to ensure that his or her application is delivered to the Division on time.<sup>6</sup> The regulations do, however, provide for situations like this where a timely application was made, but the Division has no record of that application.<sup>7</sup>

Alaska regulation 15 AAC 23.103(h) provides:

If an individual has timely filed an application but the department does not have that application on file, the individual may submit a request to reapply on or before December 31 of the dividend year. A request to reapply must be accompanied by one of the following forms of evidence that an application was timely filed with the department:

- (1) a mailing receipt;
- (2) a mailing return receipt documenting delivery to the department, or a receipt issued by the department;

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<sup>4</sup> Alaska Statute AS 43.23.005(a)(1).

<sup>5</sup> AS 43.23.011(a); Alaska Regulation 15 AAC 23.103(g).

<sup>6</sup> 15 AAC 23.103(g).

<sup>7</sup> Applications can be lost in the mail, and it is possible that an application delivered to the Division could be mishandled and lost.

- (3) a copy of the computer generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process;
- (4) if the previous application was filed on or after January 1, 2009, a notarized affidavit in which the individual mailed or submitted the previous application timely . . . an individual may request to reapply under this paragraph only once during the individual's lifetime.

Unfortunately, Mr. M. cannot qualify for a PFD under this regulation because he does not have any of the listed documents. While it is true that Mr. M. could file a notarized affidavit stating that he filed an application on time, subparagraph (4) was made applicable only for applications originally filed on or before January 1, 2009. Mr. M.'s original application was filed in January of 2008, so he cannot take advantage of this provision.

There can be situations where a late application is accepted even without the documents listed in 15 AAC 23.103(h). For example, in one case the applicant, D.V.V., testified that she had mailed her application in the same envelope as another application, that of M.A.<sup>8</sup> There was no dispute that the envelope containing M.A.'s application had been mailed on time. There was also no dispute that D.V.V. and M.A. had regularly filed their applications together in one envelope for the previous 15 years. Under those circumstances, it was found that the envelope containing M.A.'s application was the "functional equivalent" of the required mailing receipt.<sup>9</sup>

*In the Matter of D.V.V.* does not help Mr. M. in this case. There is a computer generated page showing that other PFD applications had been filed.<sup>10</sup> This cannot be used as the functional equivalent of proof that S. M. had filed on line, however, because there is no dispute that he did not actually file on line. An attempt to file was made, but S. M. knew on January 27, 2008 that this attempt was not successful. Regardless of why that attempt did not work, an unsuccessful attempt to file an application cannot be proof that an applicant did submit a timely application when in fact the applicant concedes that he knew the attempt was unsuccessful at the time.

This case is more like *In the Matter of J.B.S.*<sup>11</sup> In *J.B.S.*, the applicant had filed electronically for his wife and children. He then tried to file for himself. He thought he had filed successfully, but in fact the Division did not receive his application. In that case, it was determined that J.B.S. should have known that his application had not been received since he did

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<sup>8</sup> *In the Matter of D.V.V.*, OAH No. 07-0476 PFD (Commissioner of Revenue, adopted 2008).

<sup>9</sup> *In the Matter of D.V.V.*, page 3.

<sup>10</sup> 15 AAC 223.103(h)(3); Exhibit 3, page 6.

<sup>11</sup> OAH No. 09-0138-PFD (Commissioner of Revenue, adopted 2009).

not receive a confirmation number for his application even though he had received confirmation numbers for everyone else in the family.<sup>12</sup>

S. M.'s argument is not as strong as J.B.S.'s because Mr. M. was actually aware that his online application had failed. He knew that he had not met his obligation of ensuring that the application had been delivered on time.<sup>13</sup> The Division correctly found that S. M. had not made a timely on-line application.<sup>14</sup>

The Division also correctly determined that it could not accept Mr. M.'s application based on the paper application mailed in January of 2008. There is no reason to doubt G. M.'s testimony that he did mail that application. The Division's regulations, however, put the risk of lost applications on the applicant. Applicants are not required to obtain proof of mailing when they mail paper applications, but if the application is lost in the mail, they cannot receive a PFD without that proof.<sup>15</sup> By regulation, the only acceptable proof of mailing at the time this application was mailed was a Postal Service mailing receipt or return receipt. Mr. M. elected not to purchase either of these precautionary services.

Under the facts of this case, the Division does not have the authority to accept Mr. M.'s late application or to consider the previous application that apparently never arrived at the Division's office.

#### **IV. Conclusion**

The Division correctly denied S. M.'s 2008 PFD application  
DATED this 22<sup>nd</sup> day of June, 2010.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>12</sup> *In the Matter of J.B.S.*, page 3.

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

<sup>14</sup> The Division searched its computerized "first page data trap" to see if sufficient identifying information had been sufficient to identify S. M.'s attempt to file. It did not find a record of his attempt after searching by name, social security number, or birth date. Exhibit 9.

<sup>15</sup> *See In the Matter of R.P.P.*, OAH No. 09-0267-PFD (Commissioner of Revenue, adopted 2009); *In the Matter of K.S.S.*, OAH No. 09-0099-PFD (Commissioner of Revenue, adopted 2009).

## 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 19<sup>th</sup> day of July, 2010.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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