

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

IN THE MATTER OF)	
V. J. H.)	Case No. OAH 10-0563-PFD
)	Agency No. 2010-066-8712
<u>2010 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

V. J. H. applied for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Mr. H. was not eligible, and it denied the application initially and at the informal appeal level. Mr. H. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on December 7, 2010. Mr. H. appeared by telephone. Wendy Hughes represented the Division by telephone. The administrative law judge finds that Mr. H. does not qualify for a 2010 dividend.

II. Facts

Mr. H. admits that he did not file his 2010 PFD application until after the deadline. Mr. H. explained that he is a member of merchant marine service who was serving on a ship contracted with the U.S. military sealift command during application period. The ship was at sea, and Mr. H. did not even have internet access from December 2009 to April of 2010 which included all of the 2010 PFD application period. Mr. H. explained that he thought that there would be some exception to the application deadline for Alaskans in his situation. Mr. H. filed his 2010 PFD application on July 17, 2010, when he returned to Alaska after he was discharged.

III. Discussion

In order to qualify for a permanent fund dividend, a person must file an application.¹ Applications must be filed between January 2 and March 31 of the dividend year.² The timely filing requirements for PFD applications are governed by 15 AAC 23.103. Subsection (a) of this regulation reads in part, “an application must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed.” Subsection (g) of the regulation provides that the Division will deny applications that are not timely filed.

The timely filing requirements in 15 AAC 23.103 are very strict. There are some limited provisions for exceptions to these rules in 15 AAC 23.133. The exceptions to the rule requiring timely filing are limited to disabled people when their disability prevents timely filing, certain

¹ AS 43.23.011(a).

² AS 43.23.005(a)(1).

children when their parents did not file for them, and children or disabled people who are wards of state social service agencies.

While the PFD eligibility statutes governing absences from Alaska include a special provision that allows an absence for serving under articles of employment aboard an oceangoing vessel of the United States merchant marine, there is no statutory or regulatory exception to the application deadline that allows members of the merchant marine service or other Alaskans to file after the deadline when circumstances beyond their control prevent them from being able to file before the deadline. As discussed at the hearing, some Alaskans who know that they may be unable to file during the application period prevent their disqualification by having someone else file on their behalf under the procedures set out in Alaska regulation 15 AAC 23.123.

There is an exception to the timely filing requirement that is found in Alaska Statute 43.23.011(b) that allows certain military personnel who were in combat situations during the application period to file late. That exception, however, applies only to those Alaskans who received hostile fire or imminent danger pay while on active duty as a member of the armed forces of the United States during the application period. Mr. H. did not meet the requirements of this exception.

Because Mr. H. did not file a timely application for a 2010 permanent fund dividend, the Division correctly denied his late application in accordance with 15 AAC 23.133(g).

V. Order

IT IS HEREBY ORDERED that the application of V. J. H. for a 2010 permanent fund dividend be DENIED.

DATED this 9th day of December, 2010.

By: Signed _____
Mark T. Handley
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 10th day of January, 2011.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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