

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

IN THE MATTER OF	)	
	)	
J H	)	Case No. OAH 04-0028-PFD
	)	CASELOAD NO. 040344
<u>2003 PERMANENT FUND DIVIDEND</u>	)	

**PFD FORMAL HEARING DECISION & ORDER**

**I. Introduction**

J H timely applied for a 2003 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. H was not eligible, and it denied the application initially and at the informal appeal level. Ms. H requested a formal hearing by written correspondence. The hearing examiner finds that the applicant does qualify for a 2003 dividend.

**II. Facts**

The division received an online application for Ms. H on March 22, 2003. Ms. H mailed the computer-generated signature page to the division on March 26, 2003, postmarked from Santa Barbara, California. The page contained her name, address, contact information, and names and contact information for her verifiers. Above her signature was the following notation:

**I certify that:**  
I am now and intend to remain an Alaska resident indefinitely.  
I was an Alaska resident for all of 2002.  
I haven't claimed residency in another state.  
I was in the state of Alaska for at least 72 consecutive hours in 2001 or 2002.

**I understand that if what I say isn't true, it's a criminal offense and if I am convicted, in addition to any criminal penalties:**  
I may lose this and all future dividends.  
I may be required to pay back all dividends I have been paid.

**I understand that if I deliberately misrepresent or recklessly disregard a fact, I am liable for civil penalties:**  
I could lose this dividend and my next five dividends.  
I may have to pay a fine of up to \$5,000.

\* \* \* \* \*

I certify that the information I submitted electronically is true and correct.

Because the signature page arrived with an out-of-state postmark, the division sent Ms. H a letter asking her to explain this fact and complete parts of a supplemental schedule regarding any absences. Ms. H did not receive this letter, probably because of a problem in forwarding her mail to California, where she was going to school. When she did not respond, the division denied her application. The post office returned the denial to the division with the notation, “forward time exp rtn to send” and Ms. H’ California address.

When Ms. H finally received the denial letter, she requested an informal conference, stating that:

1. My stepbrother filled out the application for me. My parents always fill it out for me, but my stepbrother did it for me because my parents were visiting my stepfather's elderly mother in California. I am aware that I should have looked over the application and said that I was in school. This was an honest mistake and I do very much apologize for this.

2. Honestly, I never received the request, which could be due to the fact that I had a change of address for moving to California for college. I did get all my mail forwarded, but it might also be that the PFD Division does not forward. My parents also did not receive the request at my original address. Everything that my mom received by her calling the PFD Division in Anchorage was faxed to me by her. I honestly would have done this much sooner being the fact that I am in college and could really use the money for my college tuition. My parents were in a plane accident and my dad was hospitalized with a broken neck. At this time I was not thinking about the PFD because of my dad's condition. If I had received the request in the mail than that would have been brought to my attention and I would have done it immediately.

3. I did not provide the specific information because I did not receive the information that was needed in the mail. I definitely would have followed through with all this, if I had received the request.

4. I signed the application thinking my stepbrother had done everything correctly. Yes, I was absent when I signed the PFD because I was in California. I am a resident in Alaska and was in Alaska January of 2002 until August of 2002. I graduated in May of 2002 and spent the summer of 2002 in Alaska and then I headed off to college in August of 2002, which was in Fresno, California. I returned back to Alaska for two weeks at Christmas and then went back to Fresno, California to finish school. I was in Fresno, California January of 2003 until May of 2003 when school got out. I returned to Alaska for the whole summer of 2003 and then transferred schools to Costa Mesa, California in August of 2003. I am currently still attending school in Costa Mesa, California.

5. I am truly sorry for signing the application without looking at the whole application before signing it. I am for now own doing my own application. This money can help me out with my schooling, which it has done in the past.

6. Honestly, I never received anything in the mail otherwise I would have definitely not let it get this far. I hope that the PFD Division will consider not denying me for the 2002 dividend. Alaska is my home and I have lived there since 1991 and I plan on returning back to Alaska after I graduate from college.

This case presents an unusual situation that suggests a need to rephrase or add some information to the signature page in future years. It's unknown what Ms. H' brother might have been thinking when he filed the online application on his sister's behalf and was asked "are you physically present in Alaska?" Apparently he was. But this case concerns Ms. H, not her brother. Although Ms. H apologizes for not reading the form more carefully, there isn't actually anything on the form that is false or misleading, or that even hints of omission. A reasonable person who had been handed this form by a trusted relative would not hesitate to sign it under penalty of perjury, even after carefully reviewing it. The name, address, social security number, and other information are all correct. Ms. H was and intends to remain an Alaska resident. She was a resident for all of 2002. She hasn't claimed residency in another state (she pays nonresident tuition). She was in Alaska for 72 consecutive hours in 2002. While her brother's conduct raises questions, there was no reason for Ms. H not to sign the form. She never saw any of the warnings or instructions that her brother had to click through before he printed the signature page for her.

After receiving Ms. H' informal conference request, the division thoroughly investigated her absences. Ms. H provided all the information that was requested of her. Vanguard University of Southern California verified that Ms. H was a full-time student in the fall of 2003 and the spring of 2004, and that her permanent address was at her parents' home in Eagle River. Fresno City College verified that she had been a full-time student there in the fall of 2002 and spring of 2003, and that she was attending as an out-of-state resident.

After completing its investigation, the division affirmed its decision to deny the application. In its decision document, the division wrote, "I made this decision because: Issue A: you did not disclose a reportable absence on your 2003 PFD application." The

division listed 15 “key facts” it had found, although some of the facts are merely conclusions. These “facts” are listed thus:

- Fact 1: You filed your 2003 Permanent Fund Dividend on-line on March 22, 2003. By completing and filing an application on-line you stated that you were physically present in Alaska at the time you filed your on-line application. An applicant cannot claim to be absent from Alaska and submit an on-line application. An applicant must answer "Yes" to the question, "...are you in Alaska today?" in order to be able to submit an on-line application.
- Fact 2: You signed and dated your signature page on March 22, 2003.
- Fact 3: Your signature page was mailed in an envelope postmarked in Santa Barbara, CA on March 26, 2003.
- Fact 4: You failed to respond to the division's September 9, 2003 correspondence requesting you to provide an explanation for the discrepancy between the fact that you stated that you were in Alaska when you filed your application and the fact that your envelope was postmarked from out of state, a listing of all the dates you were absent from Alaska from December 31, 2001 through the date of your response, the reasons for those absences and to complete and return a 2003 Adult Supplemental Schedule.
- Fact 5: You agreed with the facts of your denial in your request For An Informal Appeal.
- Fact 6: In your appeal you stated in part "My stepbrother filled out the application for me...I never received the request...due to the fact I had a change of address...I did not provide the specific information because I did not receive the information that was needed in the mail. Yes, I was absent when I signed the PFD because I was in California...was in Alaska until August of 2002...returned...two weeks at Christmas...returned...summer of 2003...currently...attending school in Costa Mesa, California".
- Fact 7: You provided a completed 2003 Adult Supplemental Schedule, a copy of your Anchorage School District Student Transcript, a Registration Statement from Fresno City College and a copy of your 2003 Denial Letter.
- Fact 8: You failed to provide a listing of all the dates and reasons that you were absent from Alaska from December 31, 2001 through the date of your response.

- Fact 9: On your 2003 Adult Supplemental Schedule you stated that you left Alaska on August 12, 2002 and intend to return to Alaska to remain indefinitely "After Graduation" in May of 2006.
- Fact 10: By your own admission you were absent from Alaska for 141 days during calendar year 2002.
- Fact 11: By your own admission you were absent at the time you mailed your 2003 signature page and failed to disclose your absence (you weren't physically present in Alaska when you signed your 2003 signature page, and you were absent from Alaska more than 90 days during 2002, the qualifying year for the 2003 dividend) on your 2003 PFD application.
- Fact 12: By signing your application, you acknowledged that you understood that a false claim of eligibility to obtain a permanent fund dividend for yourself or for another was a criminal offense and makes you ineligible for a permanent fund dividend.
- Fact 13: An individual who took this action severs eligibility and residency for Permanent Fund Dividend purposes and is not eligible to receive the 2003 dividend.
- Fact 14: Individuals who willfully misrepresent facts in conjunction with a Permanent Fund Dividend application are subject to penalties as outlined in the statutes and regulations governing the Permanent Fund Dividend program.
- Fact 15: You failed to disclose a reportable absence and are not eligible to receive the 2003 dividend.

The division bases the conclusions that it has labeled as facts on the following laws:

**Sec. 43.23.035. Penalties and enforcement.**

\* \* \* \* \*

(c) An individual who, in claiming a permanent fund dividend, or an individual who, in certifying another person's eligibility, willfully misrepresents, exercises gross negligence, or recklessly disregards a material fact pertaining to eligibility forfeits the dividend, is subject to a civil fine of up to \$5,000, and loses eligibility to receive the next five dividends following the forfeited dividends. The commissioner may commence proceedings in court to enforce this subsection....

**15 AAC 23.103. Application generally**

\* \* \* \* \*

(e) Absences that total 90 days or more during the qualifying year must be disclosed on the application. Any absence since January 1 of the qualifying year must be disclosed upon request of the department.

\* \* \* \* \*

(j) The department will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department....

There is no evidence as to whether Ms. H' brother was intentionally providing deceptive information to the division or not, but if so the evidence does not suggest that Ms. H was a party to the deception. She merely knew that her brother had been helping her out during a difficult time. Even a diligent, careful applicant would not have reason to suspect anything improper in this situation. While somebody else inputted the applicant's information, the identifying information appears on the signature page, and must be reviewed and certified as correct by the applicant herself before the dividend can be paid. Ms. H submitted a genuine signature with an accurate date. From an applicant with Ms. H' perspective, the application simply does not look in any way suspicious. There was no way for her to know that anything improper might have occurred. She immediately supplied all information regarding her absences on the division's request.

**III. Conclusion**

I find no intentionally deceptive behavior on Ms. H' part, and indeed no evidence that she was careless or negligent in the completion of her application. Her application for a 2003 Permanent Fund dividend should be granted.

**IV. Order**

IT IS HEREBY ORDERED that the application of J H for a 2003 permanent fund dividend be granted.

DATED: January 14, 2005

By Signed  
DALE WHITNEY  
Administrative Law Judge

## V. Adoption

I, Terry L. Thurbon, under the authority of AS 43.05.010, order that the attached decision relating to the eligibility of J H for a 2003 permanent fund dividend be adopted and entered in the applicant's file as of this date as the final administrative determination in this matter.

**Appeal Rights:** Applicants may ask the Commissioner of Revenue to reconsider this decision by filing a written Motion for Reconsideration within 10 days after the date of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

If a Motion for Reconsideration is not filed, this order is the final administrative decision of the Alaska Department of Revenue. Appeals may be taken to the Alaska Superior Court. Appeals must be filed within 30 days of the date of this order, in accordance with Rules of Appellate Procedure 601-612 and 15 AAC 05.040.

DATED: 14<sup>th</sup> day of January, 2005

By Signed \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge