

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

IN THE MATTER OF

S.M.

Case No. OAH05-0014-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

S.M. applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. M. was not eligible, and it denied the application initially and at the informal appeal level. Ms. M. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

II. Facts

The material facts in this case are not in dispute. Ms. M. signed her 2004 permanent fund dividend application on March 31, 2004. On that same day, she consigned the application to Federal Express for delivery to the division. Federal Express delivered the application to the division on April 2, 2004.

III. Discussion

The PFD Division denied Ms. M.'s application because she "failed to ensure that her 2004 application was delivered to the department before the end of the application period for the 2004 dividend, or that it was delivered to the post office in sufficient time to be postmarked before the end of the application period for the 2004 dividend." In her appeal, Ms. M. argues

There is nothing in AS 43.23 that defines a postmark as only a United States Postal Service mark. There is no statute prohibiting using a courier service & no statute excluding a courier service time & date of when a letter was received for service in the statutes. In this day of technology, a reasonable man would think that the time & date a courier service received a letter in their system would equate to a valid postmark by United States Postal Service. Since those exclusions are not in the statutes, I believe my application to be timely.

Ms. M. is correct that there is nothing in AS 43.23 that defines a "postmark." However, AS 43.23.055, which is entitled "Duties of the department," states that the Department of Revenue shall "adopt regulations...that establish procedures and time limits for claiming a permanent fund dividend." To fulfill this duty, the department adopted the following regulations:

15 A A C 23.103(g): It is an individual's responsibility to ensure that an application is timely delivered to the department during normal business hours or is delivered to the post office in sufficient time to be postmarked before the end of the application period. The department will deny an application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service that describes the specific circumstances under which it incorrectly posted the individual's application or caused a delay in posting.

15 A A C 23.993(24): "postmarked" means that an official cancellation stamp has been placed by the United States Postal Service, or the postal service of a foreign country, that records the date and place of mailing.

Ms. M. is correct that no statute prohibits applicants from hiring private couriers or other third parties to deliver their applications to the division. An applicant could contract with a global courier service such as Federal Express, a regional or local delivery service, or even with another individual to deliver an envelope to the division. But the division's regulations, duly adopted as the statutes require, make it clear that it is the applicant's sole responsibility to make sure the application is either delivered to the division before the filing deadline, or to an official post office in time to be "postmarked" before the filing deadline, as that term is defined in 15 A A C 23.993(24).

While it may compete with the government, a large private corporation like Federal Express is not the legal equivalent of the official government postal service. Congress commissioned the United States Postal Service under the express authority of Article I, Section 8 of the United States Constitution. The FedEx Corporation is a private business that provides business, transportation and logistics services to the public.¹ Like any private third party, FedEx lacks the ability to postmark mail with an official government seal or mark.

IV. Conclusion

Ms. M.'s application for a 2004 PFD was delivered to the department on April 2, 2004. The application was not postmarked. April 2, 2004 is the official date of filing. Because this date is not within the application period that runs from January 2 through March 31, Ms. M.'s application was not timely filed. The division was correctly following the law when it made the decision to deny the application.

¹ <http://www.fedex.com/us/about/today/companies/corporation/tacts.html>(July 25, 2005).

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of S.M. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 29th day of July, 2005.

By: DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of S.M. for a 2004 permanent fund dividend be adopted and entered in her file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 A A C 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 29th day of July, 2005

By: DALE WHITNEY
Administrative Law Judge

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
7/29/05