

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

IN THE MATTER OF

J.S.

Case No. OAH05-0023-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.S. applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. Mr. S. 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. Mr. S. signed his application for a 2004 dividend on April 2, 2004, and filed it at the Anchorage Dividend Information Office that same day. There is no allegation of postal error, or evidence that Mr. S. was in the military during the application period. In his request for a formal hearing, Mr. S. stated that he had "dyslexia, and memory loss which makes me forget easily." On January 7, 2005 the division sent Mr. S. a letter requesting information and a form for a physician's certification of disability. The letter provided a copy of the definition of "disabled" in AS 43.23.095(2), and asked Mr. S. to review it. The letter directed Mr. S., if he felt he met the definition of "disabled," to have a physician complete and return the form. Mr. S. did not respond.

III. Discussion

In order to qualify for a permanent fund dividend, a person must meet several eligibility requirements listed in AS 43.23.005(a). In addition to residency, citizenship and physical presence requirements, submission of an application to the department is a required element of eligibility.¹ In order to qualify for a dividend, applicants must submit their applications during the period from January 2 through March 31 of the dividend year.² The only exceptions to this rule are for certain

¹ AS 43.23.005(a)(1).

² AS 43.23.011.

military personnel in combat situations,³ for certain children,⁴ and for certain disabled people when their disability prevents timely filing.⁵ According to 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.

In his formal hearing request, Mr. S. agreed that his application was not timely, stating that it was filed "one day late by accident." Mr. S. further writes,

I believe I am eligible because I am a permanent resident residing in Alaska and have been for the past twenty-four years. Even if it has been one day late I greatly apologize, I have dyslexia, and memory loss which makes me forget easily.

At a formal hearing, the person requesting the hearing has the burden of proving that the division's actions were in error.⁶ The PFD Division correctly recognized that Mr. S.'s assertions regarding dyslexia and memory loss might constitute a claim that a disability prevented him from filing a timely application. But the division was also correct to conclude that Mr. S. has not provided adequate information to support a claim of disability. There are no other provisions of law that would permit the division to grant an untimely application in this case.

IV. Conclusion

There is no dispute that Mr. S. did not file a timely application for a 2004 dividend. Mr. S. has not submitted evidence that would support his inclusion in the very limited group of applicants who may file an application after the filing deadline. The division was correctly following the law when it denied the late application.

V. Order

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

DATED this 28th day of July, 2005.

By: DALE WHITNEY
Administrative Law Judge

³ AS 43.23.011(b)-(c).

⁴ 15 A A C 23.133(b)-(c), (f)-(i).

⁵ 15 A A C 23.133(d).

⁶ 15 A A C 05.030(h).

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 J.S. for a 2004 permanent fund dividend be adopted and entered in his 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 28th 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
7/28/05