

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

IN THE MATTER OF

C.S.

Case No. OAH 05-05-0028-PFD

2003 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

C.S. applied for a 2003 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. S. was not eligible, and it denied the application initially and at the informal appeal level. Ms. S. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on February 23, 2003. The administrative law judge affirms the division's decision.

II. Facts

Ms. S. submitted her 2003 PFD application on May 10, 2004. In her informal conference request, Ms. S. wrote,

I know I filed late claim, I contacted you to obtain info. In my app. I stated I inadvertently overlooked mailing. At time (3/31/03) I was homeless. I met all guidelines & mailed you letters/copies (2) verifying my homelessness.

Ms. S. also applied for a 2004 dividend. That application is not at issue in this case, but a document in support of that application is relevant to this case. To supplement her 2004 dividend application, Ms. S. returned to the division a questionnaire on May 1, 2004, for people who had not applied for a dividend the previous year. One question on this form asks, "Explain why you did not file for a 2003 Permanent Fund Dividend." Ms. S. wrote on the form, "overlooked it, by mistake, overlooked it by mistake - Oops!" In an attached letter she wrote,

I inadvertently overlooked by mistake to file my 2003 PFD, although I was & am totally eligible & meet all eligibility requirements. As such, I feel I am/should be allowed to file at this late date for 2003 P.F.D. Could you please send any/all necessary paperwork to file for 2003 PFD as of this date?

During most of the 2003 application period, Ms. S. was staying at Safe Harbor Inn in Anchorage. In a letter to the division of December 16, 2004, Safe Harbor's project director wrote in part,

C.S. has asked me to write to you regarding her failure to apply for a Permanent Fund Dividend in 2003.

I can confirm that Ms. S. was a resident at Safe Harbor Inn from January 18, 2003 through April 11, 2003, when she moved to permanent housing. She was an excellent guest, although she was ill during much of her stay and had to remain in bed in her room. I am sure that she would have completed the necessary paperwork to receive a Permanent Fund Dividend if her health had permitted.

In her undated formal hearing request that the division received on January 5, 2005, Ms. S. wrote in part,

As I've previously stated, I met all the criteria w/exception of mailing date. I was sick in bed, @ a shelter, homeless and no money for a stamp. I couldn't get up, let alone walk outside to borrow stamp. Please, won't you realize I was unable to make mailing cut-off?

At the hearing, Ms. S. testified that she was sick with the flu during the application period.

In answer to a question regarding the duration of the illness, Ms. S. stated, "I believe it was almost a week, several days." Ms. S. testified that she believed that the time she was sick was in the last week of March in 2003, although she seemed to be uncertain on the point. She testified that several people staying at Safe Harbor had the ailment at the same time, and that symptoms included heavy coughing, nausea, diarrhea and a fever. While she was sick, Ms. S. testified, she mostly laid in bed and slept, getting up only when she was sick.

III. Discussion

Among requirements such as being a state resident and being physically present in the state, one of the required elements of PFD eligibility is the filing of an application.¹ In order to be timely, an application for a permanent fund dividend must be filed during the period that begins January 2 and ends March 31 of that dividend year.² 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.

The only provisions for exceptions to these rules are in 15 A A C 23.133. The exceptions to the rule requiring timely filing are limited to disabled people when their disability prevents timely filing,

¹ AS 43.23.005(a)(1).

² AS 43.23.011

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

Ms. S. was a credible witness, and there has been no suggestion of dishonesty or inappropriate motives in her case. She appears to meet the other eligibility requirements. But the law is quite clear that unless she fits within one of the exceptions to the rule requiring timely filing, the division may not legally grant her application. Every year dozens of people forget to file their applications on time, often because of very compelling circumstances, including the suffering of extremely serious tragedies during the application period. The law cannot be applied to Ms. S. differently than it has been applied to these other people.

One of the exceptions to the rule requiring timely filing is when the applicant was disabled during the qualifying year, and the disability prevented the person from filing on time.³ For purposes of this rule, "disabled" means

physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause; "disabled" does not mean "incompetent"....⁴

I have given serious consideration to the possibility that a disability may have prevented Ms. S. from filing her application on time. In deciding against this possibility, I have considered several factors. First, Ms. S. has the burden of proving the division was in error when it denied her application.⁵ Ms. S. initially gave mere oversight as the reason she did not file the application. She did not identify her illness as the reason she did not file on time until some time well into the appeal process, and she did not identify it as the only reason. In addition to being sick for "several days," Ms. S. cited the facts that she was homeless, in a shelter, and had no money to buy a stamp as reasons she did not file on time. Her application and the other documents she filed give reason to believe that, under all the circumstances, she simply forgot to file. At the hearing, Ms. S. was not entirely certain of the dates she was sick. She testified that the flu affected her for "almost a week, several days." Out of a three-month filing period, it does not seem that several days of the flu could entirely explain failure to mail an application.

Finally, I note the unusual definition of "disabled" in the PFD statutes. In order to have her late application accepted under this provision of law, Ms. S. would need to prove that she

³ 15 AAC 23.133(d). Subsequent changes to this regulation require a physician to certify the disability.

⁴ AS 43.23.095(2).

⁵ 15 AAC 05.030(h).

was "physically unable to complete and sign an application due to a...health impairment." While the flu may have contributed to the other factors that caused her to forget to file her application, I find that the evidence is not sufficient to prove that Ms. S. was physically unable to complete and sign an application during the application period.

IV. Conclusion

Ms. S. did not file her 2003 permanent fund dividend application during the application period. She was an adult at the time, and she was not prevented from filing on time by a physical disability. The Permanent Fund Dividend Division was correctly applying the law when it denied the application.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of C.S. for a 2003 permanent fund dividend be AFFIRMED.

DATED this 25th day of August, 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 C.S. for a 2003 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 25th day of August, 2005

The undersigned certifies that
this date an exact copy of the
foregoing was provided to the
following individuals: PFD Division 8/25/08

By: DALE WHITNEY
Administrative Law Judge