

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

IN THE MATTER OF

S. and M. A. and their children M. and D.

Case No. OAH 05-0029-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

S. and M. A. applied for 2004 permanent fund dividends for themselves and on behalf of their two children M. and D. A. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. The Atkinsons requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on February 23, 2005. Ms. A. appeared by telephone. Susan Lutz represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

II. Facts

Ms. A. testified that she mailed the envelope containing her family's applications on March 31, 2004 in Seward. She testified that she mailed the envelope by placing it into a public mailbox at some time before 4:15 p.m., which was the time printed on the mailbox for the last pickup of the day. The envelope was postmarked on April 5, 2004, in Anchorage.

Upon talking to a postal employee in Seward, Ms. A. learned that mail deposited in Seward mailboxes are trucked to Anchorage to be postmarked. The only way to have an envelope postmarked in Seward is to take it in to the postal counter during post office hours. Ms. A. procured a letter from the Postal Service affirming that mail collected in Seward is postmarked in Anchorage. The service stated that the Seward post office maintains records of mail picked up and dispatched to Anchorage for processing, and the Anchorage office is set up to accommodate mail arriving from Seward and several other outlying areas. The records do not show any vehicle problems or unusual circumstances that would have caused mail deposited by 4:15 p.m. to be postmarked on a later day.

III. Discussion

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 and AS 43.23.011. The exceptions to the rule requiring timely filing are limited to disabled people when their disability prevents timely filing, certain children when their parents did not file for them, children or disabled people who are wards of state social service agencies, and military personnel in certain combat situations.

Ms. A. provided convincing evidence showing that mail is often delayed, arriving later than the Postal Service generally promises to deliver. Ms. A. was a credible witness, and there is no dispute with her assertions that she and her family are good citizens and the type of people that the state should want to retain as residents.

The law clearly places the burden of ensuring that a mailed application is postmarked on time on the applicant. This means that even if it can be proven that Ms. A. deposited the envelope into the mailbox before the last mail pickup of the day, it nevertheless remains her responsibility to ensure that the envelope is actually postmarked on that day. Ms. A. is correct that postal delays are not at all uncommon. For this reason, a person who puts a PFD application in a mailbox at any time near the end of the application period incurs some risk. The risk can be eliminated by mailing the application early enough to contact the division and confirm receipt of the applications before the end of the filing period. Taking the envelope into the post office and obtaining and saving a receipt of mailing can also eliminate any risk. Considering the amount of money at stake, many applicants choose to spend the small amount for certified mail.

The facts in this case do not present a particularly unusual situation. While there is no dispute about Ms. A.'s sincerity and credibility, the law provides explicit directions about

¹ AS 43.23.005(a)(1).

² AS 43.23.011

how this kind of situation should be handled. The division is directed to look to the postmark as the final indicator of timeliness, unless the Postal Service specifically admits error. The responsibility to ensure a timely postmark is on the applicant, not the division or the Postal Service.

IV. Conclusion

The A.'s applications were postmarked after the close of the application period. The United States Postal Service has not described specific circumstances under which it incorrectly posted the application or caused a delay in posting. The division was correctly applying the law to the facts of the case when it made the decision to deny the applications in this case.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of S., M., M., and D. A. for 2004 permanent fund dividends be AFFIRMED.

DATED this 26th 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 S., M., M., and D. A. for 2004 permanent fund dividends be adopted and entered in their 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 26th day of August, 2005.

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

By: DALE WHITNEY
Administrative Law Judge