

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

IN THE MATTER OF

J.J.-B.

Case No. OAH 05-0039-PFD

2004 Permanent Fund Dividend

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

J.J.-B. applied for a 2004 permanent fund dividend. The Permanent Fund Division determined that Ms. J.-B. not eligible, and it denied the application initially and after an informal conference. Ms. J.-B. requested a formal hearing by teleconference. The division filed a motion to dismiss the appeal, asserting that it was not filed by the deadline. The administrative law judge grants the motion.

**II. Facts**

Ms. J.-B. filed her original permanent fund dividend application on May 27, 2004. The division denied the application for lack of timeliness on June 30, 2004. Ms. J.-B. requested an informal conference on July 27, 2004. The division affirmed its decision on September 30, 2004. Ms. J.-B. submitted her request for a formal hearing on January 5, 2005.

With her informal conference request, Ms. J.-B. stated that she left Alaska to return to the Caribbean because of her mother's passing away. In her formal hearing request, Ms. J.-B. reiterated that she was out of state because of her mother's death, and she also indicated that the lateness of her appeal may have been the result of an accidental knee injury that left her unable to walk.

The division asserts that Ms. J.-B. stated in a telephone conversation that the knee injury she refers to occurred in Guadeloupe in March 2004 and did not require hospitalization. The division further asserts that Ms. J.-B. returned to Alaska in May, 2004. Ms. J.-B. has not disputed these assertions.

### **III. Discussion**

In order to qualify for a permanent fund dividend, a person must file an application between January 2 and March 31 of the dividend year.<sup>1</sup> The only exceptions to this rule are for certain children when their parents do not apply for them, and for disabled people whose disabilities prevented them from filing on time.<sup>2</sup> Ms. J.-B. is an adult, and she has not alleged that a disability prevented her from filing on time. She asserts that a knee injury made it impossible for her to walk at some point, but this is offered as a reason for not making the appeal deadline, not an explanation for a late application.

A request for a formal hearing must be filed within 30 days of the issuance of an informal conference decision.<sup>3</sup> Ms. J.-B. filed her formal hearing request more than three months after the division issued an informal conference decision, and more than two months after the appeal deadline expired. Strict adherence to the appeal deadline may be waived in some circumstances in order to avoid injustice.<sup>4</sup> It is a matter of concern that Ms. J.-B. suffered a knee injury, but no evidence in the record demonstrates that this injury prevented her from filing a timely appeal. Considering all the evidence, I find that normal adherence to the legal appeal deadline would not work an injustice in this case.

### **IV. Conclusion**

Ms. J.-B.'s request for a formal hearing was not timely filed. There are no apparent interests of justice that require a variation from the time limits of 15 A A C 05.030(a) in this matter.

### **V. Order**

The Permanent Fund Dividend Division's motion to dismiss is hereby GRANTED. No further proceedings shall be scheduled in this matter.

DATED this 23rd day of March, 2005.

By: DALE WHITNEY  
Administrative Law Judge

<sup>1</sup> AS 43.23.011

<sup>2</sup> 15 A A C 23.133(b), (d).

<sup>3</sup> 15 A A C 05.030(a).

<sup>4</sup> 15 A A C 05.030(k).

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of J.J.-B. 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 23rd day of March, 2005

By: Terry L. Thurbon  
Chief Administrative Law Judge

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

PFD Division  
3/23/05