

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

IN THE MATTER OF

D.O.

Case No. OAH05-0071-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

D.O. applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. O. was not eligible, and it denied the application initially and at the informal appeal level. Ms. O. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on April 4, 2005. Ms. O. appeared by telephone with her husband, D.O. Susan Lutz represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

II. Facts

The facts are not in dispute. Mr. O. filed applications for himself and the O. children online using the MyAlaska online application system. These applications were successfully filed during the application period. When Mr. O. attempted to file for Ms. Omm, he had difficulty establishing a MyAlaska account for her. Mr. O. called a help line, and a state representative attempted to walk him through the system, but he was still unsuccessful. Later, Ms. O. tried again to create a MyAlaska account, and this time she was successful. When Ms. O. received a message saying, "thank you for registering with MyAlaska" she believed, erroneously, that her PFD application was also successfully completed.

Ms. O. attempted to apply in a timely manner and believed in good faith that she had successfully done so. She does not dispute the assertion that, in fact, she did not file a PFD application during the application period. In June 2004, on the advice of a PFD Division representative, she filed a paper application in order to initiate the appeal process.

III. Discussion

In order to qualify for a permanent fund dividend, an individual must file an application.¹ Applications must be filed during the period from January 2 through March 31 of the dividend year.² The division will deny untimely applications, except for limited special circumstances that include disabled applicants, military personnel serving in combat situations during the application period, and certain children and wards of social service agencies when their guardians fail to apply for them On time.³

Ms. O. concedes that her application was not timely, but she asks that consideration be given to the facts that the lateness of her filing was unintentional, that she did attempt to file during the deadline, and she believed in good faith that she had done so. She also points out that her efforts to use the My Alaska system were a response to the division's desire that applicants use the online system to eliminate the need for state employees to enter data from paper applications.

Because Ms. O. is a long-time Alaska resident and she has not done anything blameworthy, it is not easy to reject her honest appeal. But two good reasons compel this result. The first is simply that the law requires it. The application deadline is a strict rule of statute. There is no modifying statute that permits the division or the administrative law judge to waive the filing deadline in unusual circumstances, except for the specific exceptions noted above.

The second reason is that Ms. O.'s situation is not unique, and laws should be applied consistently to all applicants. Ms. O.'s application was late because of a mistake or misunderstanding involving a computer system. Many people, probably hundreds every year, are late in filing their applications as a result of honest mistakes or circumstances beyond their control. People mail applications on time, but forget to put a stamp on the envelope and find it back in their own mailbox after the application deadline. Weather keeps people in remote parts of the state past the application deadline. Alaskans traveling out of state sometimes send applications by private courier services selling "next-day-air" service, but overlook that fine print does not guarantee timely delivery to Alaska or Hawaii. The variations on the situations in which good-faith applicants miss the deadline are endless, but in all cases these applications are denied. Treating an honest mistake in Ms. O.'s case differently than is done in the cases of these other Alaskans would be unfair.

¹ AS 43.23.005(a)(1).

² AS 43.23.011.

³ 15 A A C 23.133; AS 43.23.011(b)-(c).

IV. Conclusion

Ms. O. did not file her application for a 2004 dividend before the end of the application period. The division was correctly following the law when it made the decision to deny the application.

V. Order

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

DATED this 3rd day of October, 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 D.O. 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 3rd day of October, 2005

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

PFD Division
11/3/05

By: Dale Whitney
Administrative Law Judge