

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

IN THE MATTER OF

R.V.S.

Case No. OAH 05-0073-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

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

II. Facts

Mr. V.S. has applied for and received dividends every year since the beginning of the PFD program. Mr. V.S. testified that he thought he had applied on time for a 2004 and that the division had told him his application had been received, but he stated that he could be mistaken about that. He is certain that on March 31, 2004 he found his application filled out but not mailed. He immediately took it to the post office in Prudhoe Bay, but it was already closed, and he was unable to mail the application until the next day, April 1. The postmark on the application envelope reflects the April 1, 2005, mailing date. In his written formal hearing request, Mr. V.S. explained the situation:

I filled out my permanent Fund Application and though I'd mailed it. I was working over nights in Prudhoe Bay in a state of depression. The last year had been hard. I'd gone through a divorce and had to change jobs. I'd lost \$25,000 in wages, my home phone was ringing off the hook from bill collectors. I had finally gotten to a point where I could see some light at the end of tunnel and was going through paper work when I found my unmailed Fund Application in my unpaid bill paperwork. It was March 31", I was working nights and tried to make the Prudhoe Bay Post Office - but it was closed when I got there.

III. Discussion

PFD applications are governed by 15 A A C 23.103. Subsection (a) of this regulation reads in part, "an application must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." Subsection (g) of the regulation reads,

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

Mr. V.S. writes in his appeal, "Yes, by the letter of the law I am wrong. Still, I've been in Alaska since 1976, it's home and I received a permanent fund since inception. Some compassion on your part would be appreciated." In an earlier letter in support of his informal appeal, Mr. V.S. had written, "I realize that by law the April 1st filing date disqualifies my application. I also realize that it is within this appeal process to grant it."

With over half of a million PFD applications each year, it is no surprise that many applications are received late, usually by only a day or two. Many of the people who have filed these late applications describe circumstances that are very compelling, and in some cases quite tragic. In these cases, lack of compassion is usually not an issue. But the law requiring timely filing is very strict, allowing late applications to be granted only in very limited situations that do not apply to Mr. V.S., such as cases of physical disability. Mr. V.S. is incorrect that "it is within this appeal process" to grant a late-filed application in his situation. While I sympathize with his situation at the time, I must recognize that the law does not permit variance from the filing deadline in this case.

IV. Conclusion

Mr. V.S. did not file his 2004 permanent fund dividend application within the filing period of AS 43.23.011. Mr. V.S. is an adult and was not disabled. The division was correctly following the law when it made the decision to deny Mr. V.S.'s application.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of R.V.S. for a 2004 permanent fund dividend be affirmed.

DATED this 7th 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 R.V.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 7th day of October, 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
10/7/05