

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

IN THE MATTER OF

M.K.

Case No. OAH 05-0098-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.K. timely applied for a 2004 permanent fund dividend on behalf of her son M.K. The Permanent Fund Dividend Division determined that M.K. was not eligible, and it denied the application initially and at the informal appeal level. Ms. K. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

II. Facts

On his application, Ms. K. indicated that M.K.'s Alaska residency began on June 7, 2003. She stated that M.K. had been absent from Alaska from January 1, 2003, through June 7, 2003, because he had a "parent in school," and from November 30, 2003 through the remainder of the year on vacation. There is no evidence that M.K. had ever been in Alaska prior to June 7, 2003.

In her formal hearing request, Ms. K. did not dispute that M.K.'s Alaska residency began on June 7, 2003. On the appeal form she marked "not true" in answer to the division's statement that "you stated on M.K.'s application that her most recent Alaska residency for dividend purposes began on June 7, 2003." On the line asking, "what is the correct fact?" Ms. K. wrote, "M.K. is a boy." It appears that Ms. K. was objecting to the division's reference to M.K. as "her," but that she was not disagreeing with the statement about when M.K.'s residency began. Ms. K. disagreed with the division's finding that M.K.'s application had been denied, stating that "mother's PFD is under appeal." The rest of the appeal statement reads, in its entirety, as follows: "M.K. was un-officially adopted as grandparents by D. & K. M. P.O. Box *** Hoonah, AK Nov. 2003. The regulations do not state which law supercedes the other."

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident all through the qualifying year.¹ A child who is not a resident all through the qualifying year may still qualify if the child is born to or adopted by a person who is eligible for a dividend.²

There is no evidence in the file of an adoption in this case other than Ms. K f K s statement that "M.K. was un-officially adopted as grandparents by D. & K. M." It appears that D. and K. M. have not applied for a dividend on M.K.'s behalf, and that M.K. was in the physical custody of Ms. K. for all of 2003. An official adoption of a child by adoptive parents who are eligible for a dividend will allow a child to receive a dividend; an unofficial adoption as a grandchild does not affect a child's eligibility. In this case, there does not appear to be any dispute that M.K. was not an Alaska resident from January 1 through June 7 of 2003, the qualifying year for a 2004 dividend.

IV. Conclusion

An eligible Alaska resident did not adopt M.K. during 2002 or 2003. For at least the portion of 2003 from January 1 to June 7, M.K. was not an Alaska resident. M.K. is not eligible for a 2004 dividend because he was not an Alaska resident through the entire qualifying year as required by AS 43.23.005(a)(3).

V. Order

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

DATED this 28th day of September, 2005.

By: DALE WHITNEY
Administrative Law Judge

¹ AS 43.23005(a)(3).

² AS 43.23.005(c).

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 M.K. 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 28th day of September, 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
9/28/05