

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

IN THE MATTER OF

J.H. and J.H.

Case No. OAH 05-0132-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.H. timely applied for 2004 permanent fund dividends for himself and on behalf of his minor child, J. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Mr. H. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

II. Facts

Mr. H. asserts that he filed applications for himself and J. during the 2004 application period. The division does not have timely applications on file for either Mr. H. or J. On June 3, 2005 Mr. H. filed another set of applications, along with a note reading,

To Whom It May Concern:

I was going thru paperwork of mine, when I found PFD notices saying you received my application form the last few years. I realized I had not received one yet this year, so I called to find out why. I was told at that time that you don't send out notices saying you received the applications anymore & was then told they had not received my applications. I'm 99% sure I mailed them in and on time.¹

According to the division's records, on December 18, 1998 Mr. H. had submitted refiled applications and sworn statements to re-apply for 1998 dividends for himself and J.²

In his formal hearing request, Mr. H. writes in part, "I have been receiving PFDs since 1987. The only time I was late was 1998 3 months before I was put on S.S. Disability. I'am still on S.S. due to a disease called chronic Myofascial Pain Syndrome." In response to this statement, the division contacted Mr. H. to determine whether a disability may have prevented him from filing

¹ Exhibit 1, p. 5.

² Exhibit 6, pp. 1-9.

on time. The division gave Mr. H. a form for a physician to fill out certifying whether Mr. H. was disabled during the application period. Mr. H.'s physician returned the form with the notation, "I treated Mr. H. for depression in 2004, however I can't attest that Jan 2 —> Mar 31, he was at no time able to fill out a form."³

III. Discussion

In order to qualify for a dividend, the applicant must file an application during the period from January 2 through March 31 of the qualifying year.⁴ If a person has filed an application during the application period, but the division does not have any record of the application on file, the individual may submit a request to reapply.⁵ A request to reapply must be accompanied by one of three forms of evidence that the applicant actually did apply on time:

1. A mailing receipt;
2. a mailing return receipt documenting delivery to the department, or a notification of receipt issued by the department; or
3. a notarized affidavit or other documentation showing timely filing, unless a request to reapply was filed in a prior year.⁶

Mr. H. did not submit a mailing receipt, a return mail receipt or a notification of receipt from the division. Although he did submit a sworn statement of timely mailing, he is ineligible to use this form of evidence because he has done so in a prior year.

A person may apply after the deadline if a disability prevented timely filing.⁷ Mr. H. stated that receives social security disability payments, but he did not allege that a disability prevented him from filing on time. To the contrary, his position is that he did file on time. Mr. H.'s physician revealed that he treated Mr. H. for depression, but did not state that this depression or the treatment for it prevented Mr. H. from filing a timely application.

IV. Conclusion

There is insufficient evidence to conclude that Mr. H. timely filed applications for 2004 dividends for himself and for J. There is no evidence that a disability prevented Mr. H. from filing on time. The division was correctly following the law when it made the decision to deny the applications in this case.

³ Exhibit 7, p. 2.

⁴ AS 43.23.011.

⁵ 15 AAC 23.103(h).

⁶ *Id.*

⁷ 15 AAC 23.133(d).

J. may apply for her 2004 dividend if she files within one year of reaching adulthood.⁸ Mr. H. should remind J. to apply as soon as she turns eighteen; this opportunity will be lost when J. is nineteen years old.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of J.H. and J.H. for 2004 permanent fund dividends be AFFIRMED.

DATED this 21st 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 J.H. and J.H. 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 this 21st 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
10/21/05