

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

IN THE MATTER OF

V.S. and her children
A., J., J., and K. S.

Case No. OAH 05-0133-PFD

2004 Permanent Fund Dividends

DECISION & ORDER

I. Introduction

V.S. applied for 2004 permanent fund dividends for herself and on behalf of her four children. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Ms. S. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

II. Facts

Ms. S. asserts that she mailed the family's applications all at the same time on March 31, 2004. The division granted the application of Ms. S.'s husband, but denied Ms. S.'s and the children's applications. In her written appeal, Ms. S. wrote,

Our PFDs were mailed together all 6 of them. My husband received his but we didn't receive anything.

I also need to you let you know when I find his # on his PFD & ours I will mail them in asap.

Ms. S. did not submit anything further. In her informal appeal request, Ms. S. had asserted that besides mailing paper applications, she also applied online in a timely manner. Ms. S. had indicated that she would send her confirmation numbers as soon as her computer has been repaired; she has not raised this issue in the formal hearing. In her informal appeal, Ms. S. also wrote, "I feel just because we mailed it at a mailbox at night I shouldn't be denied as well as my children."

The division asserts that Ms. S.'s husband mailed his application in a separate envelope that was received before the application deadline. The envelope bearing the applications of Ms. S. and her children was postmarked April 1, 2004.¹

III. Discussion

In order to be timely, an application for a permanent fund dividend must be filed during the period that begins January 2 and ends March 31 of that dividend year.² According to 15 A A C 23.103(g),

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.

At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.³

I have reviewed the entire file in this case, and I cannot find any evidence other than Ms. S.'s written statements that would show she filed timely applications either for herself or for her children. The only reliable item of evidence is the envelope that the division submitted.⁴ This envelope has Ms. S.'s name and return address on it, and the envelope is postmarked April 1, 2004. It is more likely than not that Ms. S. mailed her application after the last mail pickup on March 31, 2004. Because Ms. S. did not ensure that the applications were mailed in time to be postmarked before the application deadline, the applicants in this case are not eligible for 2004 dividends.

Although the applications were not timely, it should be noted that the children in this case may apply for their 2004 dividends when they reach the age of eighteen, and before they reach of nineteen. Mr. and Ms. S. should remember this and remind each child to apply for a 2004 dividend immediately after the child's 18th birthday.

IV. Conclusion

Ms. S. has not demonstrated that she met the applicant's burden of ensuring that applications were filed in sufficient time to be postmarked before the end of the application period.

¹ Exhibit 1, p. 13.

² AS 43.23.011

³ 15 A A C 05.030(h).

⁴ Exhibit 1, pg. 13

The division was correctly following the law when it made the decision to deny her application and the applications of her children.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of V.S., A.S., J.S., J.S., and K.S. 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 V.S., A.S., J.S., J.S., and K.S. 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

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

PFD Division
10/21/05

By: DALE WHITNEY
Administrative Law Judge