

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

IN THE MATTER OF

D.M., Sr.

Case No. OAH 05-0152-PFD

2004 Permanent Fund Dividend

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

D.M. applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. M. was not eligible, and it denied the application initially and at the informal appeal level. Mr. M. requested a formal hearing. The division filed a Motion to Dismiss Appeal Request. Mr. M. did not respond to the motion. The administrative law judge grants the motion.

**II. Facts**

The division denied Mr. M.'s application on June 16, 2004. Mr. M. filed a timely request for an informal conference. The division asked for more information, and then on September 30, 2004, it affirmed its decision to deny the application. The division sent Mr. M. an appeal form with a stamp at the top stating, "DEADLINE, This Form Must Be Received or Postmarked On or Before: OCT 30 2004." Mr. M. dated his signature on the form January 22, 2005, and the division received it on February 9, 2005.

**III. Discussion & Conclusion**

A request for a formal hearing must be filed within 30 days after the division has issued a decision from an informal conference.<sup>1</sup> The administrative law judge may waive the deadline if strict adherence will work an injustice.<sup>2</sup>

In his formal hearing request, Mr. M. writes, "The reason for the late appeal was beyond my control, is because I'm in the military (US Army) currently training other soldiers in the military." The demands on military personnel, particularly in the current state of the nation, are well known. Nevertheless, Mr. M.'s appeal form contained his name, address, signature and three sentences supporting the appeal. The longest of these sentences is the one above explaining

<sup>1</sup> 15 A A C 05.030(a).

<sup>2</sup> 15 A A C 05.030(k).

why the form was late. It is not clear how Mr. M.'s military responsibilities delayed the return of the short appeal form by nearly three months. I do not find any significant indications that following the normal rules regarding appeal deadlines will work an injustice in this case. The division's motion to dismiss should be granted.

#### **IV. Order**

IT IS HEREBY ORDERED that the Permanent Fund Dividend Division's Motion to Dismiss Appeal Request be GRANTED and that no further proceedings be scheduled in this matter.

DATED this 9th day of September, 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.M. 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 9th 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  
9/9/05