

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

IN THE MATTER OF

D.S.

Case No. OAH 05-0153-PFD

2004 Permanent Fund Dividend

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

D.S. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. Mr. S. requested a formal hearing. The PFD Division moved to dismiss the case; Mr. S. did not respond to the motion. The administrative law judge grants the motion.

**II. Facts**

The division initially questioned Mr. S.'s application because he stated that he was in Alaska when he completed it, but the application arrived at the division in an envelope postmarked from Hawaii. When the division asked for an explanation, Mr. S. did not respond, and the division then denied the application. Mr. S. provided some information for the informal conference, but the division concluded that it was not responsive to the division's requests, and on November 16, 2004 it affirmed its decision to deny the application. With the decision document, the division sent Mr. S. a form to request a formal hearing. A stamped box at the top of the form read, "*DEADLINE*, This Form Must Be Received or Postmarked On or Before DEC 15 2004." Mr. S. dated his signature on the form January 1, 2005. The envelope containing the formal hearing request was postmarked on January 21, 2005, and the division received it on February 9, 2005. In the appeal, Mr. S. addresses the underlying issues, explaining that he had been incarcerated, was involved in court matters, and that he did not have access to his paperwork. But it appears that this information relates to the time of application and the informal conference. Mr. S. did not explain why the formal hearing request was late, and he did not respond to the division's motion to dismiss.

### **III. Discussion**

A request for a formal hearing must be filed within thirty days of the day the division issues a decision from the informal conference.<sup>1</sup> This appeal deadline may be waived if it appears that strict adherence to the filing deadline would work an injustice.<sup>2</sup>

Mr. S. has not cited any particular unusual circumstances that prevented him from filing his formal hearing request on time. There is no evidence that he was unable to receive and respond to his mail between November 16 and December 15, 2004.

### **IV. Conclusion**

It does not appear that adherence to the normal appeal deadlines will work an injustice in this case. Mr. S.'s request for a formal hearing was not timely. The division's motion to dismiss should be granted.

### **V. 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 16th day of September, 2005.

By: DALE WHITNEY  
Administrative Law Judge

<sup>1</sup> 15 AAC 05.030(a).

<sup>2</sup> 15 AAC 05.030(k).

### **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.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 16th 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  
9/16/05