

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

IN THE MATTER OF

C. and M. L.

Case No. OAH 05-0171-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

C. and M. L. applied for 2004 permanent fund dividends. 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. and Ms. L. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on April 5, 2005. Mr. and Ms. L. appeared by telephone. The administrative law judge affirms the division's decision.

II. Facts and Discussion

This case presents a purely factual dispute. The issue is whether the applicants filed electronic PFD applications during the period from January 2 through March 31, 2004, the application period for 2004 dividends.¹ The applicants filed paper applications in November, 2004, for the purpose of initiating this appeal, but contend they filed online during the application period using the MyAlaska system.

The evidence in the case is conflicting and puzzling. Ms. L. testified that she enrolled in the MyAlaska system, and then proceeded to apply for PFDs for herself and for Mr. L. "MyAlaska" is a new online service that allows state residents to create an account that can be used to apply for PFDs, as well as for accessing other state services. Applicants who have created a MyAlaska account may apply for PFDs using an electronic signature, which eliminates the need to print and mail a signature page to the division. Creating a MyAlaska account and applying for a PFD are two separate procedures, and a person may open a MyAlaska account without applying for a dividend. In that case, users would see a screen congratulating or thanking them for creating a MyAlaska account, but they would not be asked the questions that are on the PFD application.

¹ AS 43.23.011.

Ms. L. testified that she specifically remembered answering questions that would have appeared on a PFD application and not just on MyAlaska. For example, because she had moved and switched her bank account to a new branch, Ms. L. specifically remembered thinking about the question that asked whether she wanted her PFD deposited in the same account as last year; she concluded that the change in branches should not affect the deposit because the account number had not changed. Ms. L. did not recall, however, ever seeing a confirmation number. The applicants testified that they have always timely applied for dividends in previous years.

The division asserts that, having carefully searched its databases, it has found no electronic application on file for Mr. or Ms. L. The division questioned the possibility that the applicants may have enrolled in MyAlaska, but not proceeded on to complete PFD applications. At the hearing, Mr. and Ms. L. agreed to provide their MyAlaska usernames and passwords to the division, and the administrative law judge ordered the division to investigate whether the applicants had created MyAlaska accounts. In a subsequent submission to the record, the division reported that its data processing manager had investigated the matter and determined that Mr. and Ms. L. had both established a username with MyAlaska, but had not validated their identity with the account. Without validating their identity, the division asserts that Mr. and Ms. L. would have been denied access to the MyAlaska PFD application page.

It is difficult to determine exactly what happened when the applicants enrolled in MyAlaska and apparently attempted to file PFD applications. One can imagine a number of scenarios under which reasonable applicants could make a mistake and believe they had successfully applied, when in fact they had not. On the other hand, while it seems unlikely that a person could successfully apply online without leaving some kind of electronic trace that the division could detect, computers are not infallible. Ultimately, this case comes down to a matter of proof. The person who requests a hearing has the burden of proving that the action being appealed is incorrect.²

Applicants who have applied online, either using MyAlaska or the application requiring a signature page, are instantly issued a confirmation number to verify their applications. This confirmation number is also sent to the applicant by email. A person who has not received a confirmation number cannot assume the division has received an application. In her appeal, Ms. L. writes,

² 15 AAC 05.030(h).
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While I now realize that I should have received a confirmation email, should have documented the application by printing something, or should have accessed the status of my PFD online, at the time I was confident the application had gone through correctly.

The applicants were credible witnesses, and I find that they believe in good faith that they did successfully apply on time. I also find that the division has competently managed its online application system, and that it has failed after a good faith effort to find any evidence that the applicants did apply online. Given the competing evidence in the case and the applicants' inability to produce confirmation numbers, I find that the applicants have not met their burden of proving that the division's decision was incorrect. Though the evidence is not conclusive, it is more likely than not that the applicants did not successfully complete online PFD applications.

Mr. and Ms. L. ask in their appeal if a dividend has ever been granted to someone who did not have an application on file and who lacked proof of mailing, but could testify to having mailed an application on time. The answer is that a particular regulation does permit a person to be paid under these circumstances, but only once.³ Under these circumstances, the applicant must submit a notarized affidavit of timely mailing. But even with a notarized affidavit, applicants in this situation still have the burden of proving that they actually did file on time. While there is no comparable regulation governing online applications, I find that under the circumstances of this case the applicants would not have met this burden even if they had submitted the written equivalent of the their sworn testimony at the hearing. Again, while I believe the applicants to be truthful in their belief that they filed, the evidence shows it to be more likely than not that they are mistaken.

III. Conclusion

It is more likely than not that the applicants did not file 2004 dividend applications during the application period. The division's decision to deny the applications in this case should be affirmed.

IV. Order

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

DATED this 3rd day of November, 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 C. and M. L. 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 3rd day of November, 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
11/3/05