

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

IN THE MATTER OF

L.L. and her child D.L.

Case No. OAH 05-0189-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

L.L. applied for 2004 permanent fund dividends (PFD) for herself and her child, D.L. The Permanent Fund Dividend Division (Division) determined that Ms. L. and D. were not eligible, and it denied the applications initially and at the informal appeal level. Ms. L. requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal on April 22, 2005. Ms. L. did not appear. Susan Lutz represented the Division by telephone. The administrative law judge finds the Division correctly denied Ms. L.'s 2004 PFD application for Ms. L. and D., but that D. may be eligible for a 2004 PFD if he applies for himself when he is 18 years old.

II. Facts

Ms. L. as the person challenging the Division's action, has the burden of proving that the Division is in error.¹ Ms. L. did not call in for her hearing. Ms. L. did not request that the hearing be rescheduled.

Ms. L. admitted that she probably did not timely file 2004 PFD applications for herself or her child, D. In her request for an informal appeal, Ms. L. explains that she had filled out the applications and thought she had mailed them before a house fire on March 24, 2004, which destroyed her home and most of her possessions. When later she checked on the status of her PFD applications, and learned that the Division had not received them, "it appeared obvious" to her that their 2004 PFD applications "were lost in the fire."² Ms. L. filed late applications on August 16, 2004.³

¹ 15 AAC 05.030(h).

² Ex. 3, page 10.

³ Ex. 1.

Based on the evidence in the record, I conclude that it is more likely than not that Ms. L. did not file timely 2004 PFD applications for herself or her child, D.

III. Discussion

The deadline for PFD applications is governed by 15 A A C 23.103. Subsection (a) of this regulation reads in part, "an application must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." Subsection (g) of the regulation reads:

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.

The only provisions for exceptions to these rules are in 15 A A C 23.133. The exceptions to the rule requiring timely filing are limited to disabled people when their disability prevents timely filing, certain children when their parents did not file for them, and children or disabled people who are wards of state social service agencies. Also, AS 43.23.011 contains an exception for certain military personnel who were in combat situations during the application period.

Having reached the finding that Ms. L. did not file timely 2004 PFD applications for herself or D., the only possible result of this case is to conclude that Ms. L.'s 2004 PFD applications should be denied.

IV. Conclusion

Ms. L. filed only late applications for 2004 permanent fund dividends for herself and her child, D. Her late applications should be denied in accordance with 15 A A C 23.133(g).

IMPORTANT NOTE: D. may be eligible for his missed 2004 dividend when he turns 18 years old. The law allows children who miss a year's dividend, in cases such as this, to apply for the payment when they reach the age of majority. An individual who has reached majority or who has emancipated may file for a prior year dividend if an application was not timely filed by that person's sponsor when the child was a minor. Dividend applications for a prior year must be filed within one year of reaching the age of majority or emancipation if the child is emancipated before reaching 18 years old. D.'s eligibility will be determined at the time he files, if he files during that one-year period.⁴

⁴ See Alaska Statute 43.23.055(3) & Alaska Regulation 15 A A C 23.133(b)-(c).

V. Order

IT IS HEREBY ORDERED that the applications of L.L. and D.L for 2004 permanent fund dividends be DENIED.

DATED this 16th day of November, 2005.

By: Mark T. Handley
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Mark T. Handley, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of D.L. and L.L. for 2004 permanent fund dividends 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 November, 2005.

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

PFD Division
11/16/05

By: Mark T. Handley
Administrative Law Judge