

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

IN THE MATTER OF

R.A.

Case No. OAH 05-0190-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

R.A. applied for a 2004 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Mr. A. was not eligible, and it denied the application initially and at the informal appeal level. Mr. A. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on April 12, 2005. Mr. A. appeared by telephone. Susan Lutz represented the Division by telephone. The administrative law judge finds that Mr. A. does not qualify for a 2004 dividend.

II. Facts

Mr. A. attempted to file his application electronically during the application period for a 2004 dividend. Although he believes he did successfully file online, Mr. A. could not produce a confirmation number, a signature page, or a copy of a message confirming the application. The Division asserts that it has carefully examined its electronic records and has found no evidence that Mr. A. did file online.

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.

At the hearing, Mr. A. could remember specific details about attempting to file electronically. He had trouble with the myAlaska website when he was trying to apply for a 2004 PFD through that website. After Mr. A. had been trying to comply with the myAlaska instructions for a while, the myAlaska site indicated that he could no longer try to apply because he had already filed.

Mr. A. was uncomfortable with this response, so he called a help desk. He probably called the help desk listed on the myAlaska website, but he is not sure now if the help desk was for the myAlaska site or the Division site. A person at the help desk Mr. A. called told him that he had already applied. Mr. A. applied for his wife with a paper 2004 PFD application because the electronic filing process had been so frustrating.

The Division has no record of Mr. A. filing online at any time in 2004. Mr. A. could not produce a printed receipt, or a confirmation number.

Mr. A. sincerely believed he filed on time, but he probably did not. I reach this finding mindful of the rule that Mr. A., as the person challenging the Division's action, has the burden of proving that the Division is in error.¹ Other than his testimony, Mr. A. did not present any evidence of a successful online application. Without more evidence to contradict the implication created by the lack of records in the Division's database, it seems more likely that Mr. A. actually filed for myAlaska, but did not successfully file for a 2004 PFD.

The myAlaska site merely gives applicants an electronic signature that the state will recognize for certain government applications, including electronic PFD applications. The myAlaska is not maintained by the Division, so if Mr. A. called its help desk, it is likely that the person who answered was confused about what Mr. A. was trying to do and that there was a misunderstanding about what Mr. A. had applied for. PFD applicants who are signed up for myAlaska do not have to mail in a signature page for their PFD application, but they still have to complete the electronic PFD application process on the Division's website.

Mr. A.'s confusion and frustration is understandable, but having reached the finding that Mr. A. did not file a timely 2004 PFD application, the only possible result of this case is

to conclude that Mr. A.'s application should be denied.

IV. Conclusion

Mr. A. did not file a timely application for a 2004 permanent fund dividend. His late application should be denied in accordance with 15 A A C 23.133(g).

V. Order

IT IS HEREBY ORDERED that the application of R.A. for a 2004 permanent fund dividend be DENIED.

DATED this 29th day of September, 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, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of R.A. 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 29th day of August, 2005

By: Mark T. Handley
Administrative Law Judge

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

PFD Division
9/29/05