

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

IN THE MATTER OF

M.H.

Case No. OAH 05-0191-PFD

2004 Permanent Fund Dividend

CORRECTED ORDER GRANTING MOTION TO DISMISS'

I. Introduction

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

II. Facts

Ms. H. dated her application and supplemental schedule on March 2, 2004. On her supplemental schedule, Ms. H. stated that she became an Alaska resident after December 31, 2002. The division denied the application on June 30, 2004 because Ms. H. had not been an Alaska resident all through the qualifying year. The division mailed the denial letter to the address Ms. H. provided on her application. According to her supplemental schedule, Ms. H. lives at this address with her parents. Ms. H.'s two verifiers on her application, N. and

L. P. also live at this address. The postal service did not return the denial letter to the division as undeliverable.

Ms. H. contacted the division in October of 2005 when her husband received a dividend and she did not. She filed her informal conference request on October 12, 2005. In the informal conference request, Ms. H. wrote in part, "I never received a denial letter until I called your office the first week of October, I didn't know I was denied." In her formal hearing request, Ms. H. writes, "the denial letter wasn't mailed to my home to my knowledge. I called the PFD office when I received my husband's check and did not receive my own."

' The previous order cited an incorrect regulation and contained an error in the Order section. This order corrects the errors by changing the first sentence of the discussion section and changing the word "denied" to the word "granted" in the Order section. There are no other changes and no change to the intended outcome of the case.

III. Discussion

An appeal request must be filed within sixty thirty days of the day the division issues a denial of the application.² This appeal deadline may be waived if it appears that strict adherence to the filing deadline would work an injustice.³

The evidence in the file shows that the division mailed the denial letter to the correct address. The division performed its duty to serve notice on Ms. H. that her application had been denied. The division cannot in all cases be held responsible for what happens to mail that is sent to the correct address and not returned. Whether another member of the household mistakenly took the letter or it was lost somewhere, in this case I do not find sufficient evidence to demonstrate that following the normal rules regarding appeal deadlines would work an injustice.

IV. Conclusion

Because Ms. H. did not file her informal conference request before the appeal deadline, the division's motion to dismiss the appeal in this case 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 3rd day of October, 2005.

By: DALE WHITNEY
Administrative Law Judge

² 15 AAC 05.010(b)(5).

³ 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 M.H. 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 3rd day of October, 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
10/3/05