

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

IN THE MATTER OF

R.W.

Case No. OAH 05-0241-PFD

2004 Permanent Fund Dividend

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

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

**II. Facts**

Ms. W. filed her application during the 2004 application period. Because she did not receive a dividend in 2003, Ms. W. filed a supplemental schedule with her 2004 dividend. On the schedule, Ms. W. left blank the date her Alaska residency began, although she did supply the dates that she moved to Alaska, obtained a residence, and obtained permanent employment, all of which occurred in 1982. The division sent Ms. W. a form letter asking her to state when her most recent Alaska residency began. In the blank on the form, Ms. W. wrote in the date March 31, 2003. Below this she wrote in, "have always been residents. Husband was going south in winter for his medical problems. Since his passing 03-26-03 I have no need to do this." The division denied Ms. W.'s application on July 21, 2004 because of the statement that her Alaska residency began on March 31, 2003.

Ms. W. requested an informal conference on January 11, 2005, over five months after the division denied the application. Because Ms. W. did not submit the appeal within sixty days, the division affirmed its decision and did not consider the underlying issue of Ms. W.'s Alaska residency. In her formal hearing request, Ms. W. wrote, "inadvertently I put in the wrong date. Due to the fact of my husband's passing my thinking has not been to clear. I apologize." The division has moved to dismiss the appeal because of the late filing of the original appeal request.

### **III. Discussion & Conclusion**

An appeal request must be filed within sixty days of the day the division issues a denial of the application.<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> Ms. W. did not explain why she filed her appeal request almost half a year after the division denied her application.

In considering whether strict adherence to the appeal deadline would work an injustice, I consider with sympathy the passing of Ms. W.'s husband and the fact that there is evidence supporting Ms. W.'s eligibility. On the other hand, I note that more than a year had passed since her husband's passing when the division denied the application, and that it was almost half of a year after that before Ms. W. filed an appeal. Missing the appeal deadline by a few days might be overlooked, but missing it by nearly four months would seem to call for some explanation, Ms. W. addressed the original issue in the case, but did not explain why the appeal was late. Under these circumstances, I find that the interests of justice do not require variation from the normal rules regarding appeals. Because Ms. W.'s appeal was not timely, under the law she is not entitled to further consideration of the case. The division's motion to dismiss should be granted.

### **IV. 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 6th day of October, 2005.

By: DALE WHITNEY  
Administrative Law Judge

<sup>1</sup> 15 A A C 05.010(b)(5).

<sup>2</sup> 15 A A C 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 R.W. for a 2004 permanent fund dividend be adopted and entered in her 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 6th 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  
10/6/05