

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

IN THE MATTER OF:

J.T.

Case No. OAH 05-0248-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

W.N. applied for a 2004 permanent fund dividend (PFD) for his child, J.T.

The Permanent Fund Dividend Division (Division) determined that J. was not eligible, and it denied the application initially and at the informal appeal level. Mr. N. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on May 3, 2005. Mr. N. appeared by telephone. Susan Lutz represented the Division by telephone. The administrative law judge finds the Division correctly denied Mr. N.'s 2004 PFD application for J., but that J. may be eligible for a 2004 PFD if he applies for himself when he is 18 years old.

**II. Facts**

Mr. N. filed a paper 2004 PFD application for J. on October 13, 2004. Mr. N.

asserted that he attempted to file J.'s application electronically during the application period for a 2004 dividend. Although he believes he did successfully file online, Mr. N. 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. N. did file online.

Based on the evidence in the record, I conclude that it is more likely than not that Mr. N. did not complete his attempt to file a 2004 PFD application on line for J.

**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. N. could remember specific details about attempting to file electronically. Mr. N. admitted that he might have turned off his computer before he had completed the application process. Mr. N. explained that he did not get a confirmation number during his attempt to file and did not get an email confirming that he had filed.

Mr. N. attempted to file on line, but he probably did not complete the process. I reach this finding mindful of the rule that Mr. N., as the person challenging the Division's action, has the burden of proving that the Division is in error.<sup>1</sup> Mr. N. 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. N. did not successfully file timely for a 2004 PFD for Jensen.

Having reached the finding that Mr. N. did not file a timely 2004 PFD application for J. the only possible result of this case is to conclude that Mr. N.'s 2004 PFD application for J. should be denied.

#### **IV. Conclusion**

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

**IMPORTANT NOTE: J. 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. J . ' s eligibility will be determined at the time he files, if he files during that one-year period.<sup>2</sup>**

<sup>1</sup> 15 A A C 05.030(h).

<sup>2</sup> 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 application of J.T. for a 2004 permanent fund dividend be DENIED.

DATED this 19th day of October, 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 J.T. 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 19th day of October, 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:

Case Parties  
10/19/05