

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

IN THE MATTER OF

D.S. and J.P.

Case No. OAH 05-0251-PFD

2004 Permanent Fund Dividend

**ORDER GRANTING SUMMARY ADJUDICATION**

**I. Introduction**

D.S. and J.P. applied for 2004 permanent fund dividends. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. The applicants requested a formal hearing by teleconference. The PFD Division moved for summary adjudication. The administrative law judge grants the motion.

**II. Facts**

The facts in this case are not in dispute. The applicants both submitted their applications for 2004 dividends on November 8, 2004. In a letter of December 21, 2004 the applicants wrote,

We never tried to argue that we filed prior to March 31, 2004. The basis of our appeal is that we made a mistake and did not file under the deadline. We are long term Alaskans and have always applied on time in the past. Apparently we messed up this year.

We are sorry that we made a mistake. Please consider that we are human and Alaskan and plan to remain in Alaska forever.

In their formal hearing request, the applicants write,

We did not know that we had failed to apply until we did not get it (we got it all the other years).

We were unable to contact the Division by email or phone, so we submitted late applications.

1. We have lived in Alaska since '67 and '77, respectively and have always been eligible for & received the PFDs.
2. We made a mistake, and thought that each one of us had thought the other had taken care of our timely applications.

### III. Discussion

The applicants have requested a hearing by teleconference, and the division has moved for summary adjudication, which is a decision based only on the written record in the file with no teleconference. The purpose of a hearing in person or by teleconference is to resolve disputed facts. When facts are in dispute, a hearing is necessary in order to question the witnesses and evaluate their credibility. When facts are not in dispute, but legal issues are, an evidentiary hearing is generally not necessary. Legal issues can be adequately argued in writing, and they are resolved by reference to the law and application of the law to the known facts. The Alaska Supreme Court has held that "there is no right to an evidentiary hearing in the absence of a factual dispute."

Because there are no facts in dispute in this case, the division's motion should be granted. The relevant facts are that the applicants are adult civilians and were not disabled during the application period. They filed their applications after March 31, 2004. The applicants have been Alaska residents for a period measured in decades, and they have always applied on time in the past. The applicants did not file before the deadline because of a simple mutual mistake; each believed the other had submitted applications for both of them. With these facts undisputed, the only task in this case is to apply the correct law to the facts.

There are a number of eligibility requirements for a permanent fund dividend. In addition to requirements such as residency, physical presence and United States citizenship or residency status, one eligibility requirement is filing an application.<sup>2</sup> Applications must be filed during the period from January 2 through March 31 of the dividend year.<sup>3</sup> The law provides very limited exceptions to this application deadline, with provisions for late filing by certain disabled individuals, by certain wards of social service agencies, by certain children when their sponsors failed to apply for them, and by certain military members who were in combat situations during the application period.<sup>4</sup> There has been no suggestion that Mr. S. or Ms. P. fall within any of these categories.

The application deadline is a strict rule. Other than the exceptions named above, the law is very clear that a person who has not applied on time is not eligible for a dividend. The law does not provide any avenue for the division or the administrative law judge to waive the application deadline in unusual circumstances. Every year hundreds of applications are denied because of late

<sup>1</sup> *Church v. State of Alaska, Department of Revenue*, 973 P.2d 1125 (Alaska 1999), citing *Human Resources Co. v. Alaska*, 946 P.2d 441,445 n.7 (Alaska 1997), *Douglas v. State*, 880P.2d 113, 117 (Alaska 1994) and *Smith v. State*, 790 P.2d 1352, 1353 (Alaska 1990).

<sup>2</sup> AS 43.23.005(a)(1).

<sup>3</sup> AS 43.23.011.

<sup>4</sup> 15 A A C 23.133; AS 43.23.011(b)-(c).

filing, many of these being only one day late, or in some cases, just minutes past the March 31 12:00 p.m. deadline. Often these applications are filed late due to circumstances beyond the applicant's control. In all of these cases, the applications are denied. There is no legal basis to treat Mr. S. and Ms. J. any differently than all these other Alaskans who were unable to file on time.

#### **IV. Conclusion**

There are no material issues of fact in dispute. The division's motion for summary adjudication should be granted. Mr. S. and Ms. P. did not apply during the application period, and are therefore ineligible for 2004 dividends.

#### **V. Order**

IT IS HEREBY ORDERED that the Permanent Fund Dividend Division's Motion for Summary Adjudication be GRANTED, and that no further proceedings be scheduled in this matter.

IT IS FURTHER ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of D.S. and J.P. for 2004 permanent fund dividends be AFFIRMED.

DATED this 4th day of November, 2005.

By: DALE WHITNEY  
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 D.S. and J.P. for 2004 permanent fund dividends be adopted and entered in their 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 4th day of November ,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:

Case Parties  
11/4/05