

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

IN THE MATTER OF:

C.B.

Case No. OAH 05-0278-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

C.B. applied for a 2004 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Ms. B. was not eligible, and it denied the application initially and at the informal appeal level. Ms. B. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on May 24, 2005. Ms. B. appeared by telephone. Susan Lutz represented the Division by telephone. The administrative law judge finds that Ms. B. does not qualify for a 2004 dividend.

**II. Facts**

Ms. B. attempted to file her application electronically, during the application period for a 2004 dividend. Although she believed she had successfully filed online, Ms. B. 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 Ms. B. did file online.

At the hearing, Ms. B. admitted that she may have gotten confused while she was trying to apply for a 2004 online, and may have simply confirmed the status of her 2003 PFD application.<sup>1</sup>

Based on the evidence in the record I find that it is more likely than not that Ms. B. did not successfully file a timely 2004 PFD application.

**III. Discussion**

The deadline for PFD applications is governed by 15 AAC 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:

<sup>1</sup> Recording of Hearing & Ex. 5, page 5

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, Ms. B. could remember attempting to file electronically. She had trouble with the PFD website when she was trying to apply for a 2004 PFD through that website. Ms. B. now thinks that on January 17, 2004, after she had been trying to comply with the instructions, she printed out a web page confirming that the status of her 2003 PFD application was "approved." Ms. B. provided copies of this printout.<sup>3</sup> At that time, Ms. Butler thought that the printout showed that she had successfully filed for a 2004 PFD.<sup>4</sup>

Ms. B. complained that the electronic filing process for the 2004 PFD application was tedious and not consumer or user friendly. She argued that denying her 2004 PFD due to her trouble with the application process would be punitive and unfair given the circumstances and her excellent previous PFD filing history.

At the time she attempted to file, Ms. B. probably sincerely believed she filed on time, but she probably did not do so. I reach this finding mindful of the rule that, as the person challenging the Division's action, Ms. B. has the burden of proving that the Division is in error.<sup>5</sup>

Ms. B.'s confusion and frustration is understandable, but having reached the finding that Ms. B. did not file a timely 2004 PFD application, the only possible result of this case is to conclude that Ms. B.'s application should be denied.

#### **IV. Conclusion**

<sup>2</sup> Recording of Hearing.

<sup>3</sup> Ex. 5, page 5 & Ex. 3, page 4.

<sup>4</sup> Recording of Hearing.

<sup>5</sup> 15 A A C 05.030(h).

Ms. B. did not file a timely application for a 2004 permanent fund dividend. Her 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 C.B. 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 C.B. 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 19th day of October, 2005.

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

By: Mark T. Handley  
Administrative Law Judge

Case Parties  
10/19/05