

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

IN THE MATTER OF

B., J., M., M., and J. Y.

Case No. OAH 05-0283-PFD

2004 Permanent Fund Dividend

ORDER GRANTING MOTION TO DISMISS

I. Introduction

C.Y. applied for 2004 permanent fund dividends for her five minor children. The Permanent Fund Dividend Division determined that none of the children were eligible, and it denied the application initially and at the informal appeal level. Ms. Y. requested a formal hearing. The PFD Division moved to dismiss the case. The administrative law judge grants the motion.

II. Facts

In January, 2004, Ms. Y. established online accounts for everyone in her family on My Alaska. She apparently assumed that after establishing My Alaska accounts, she did not need to do anything further to file a PFD application. On March 31, 2004 she went online to verify that her family's applications had been filed, but she was unable to find a record of any applications on file. Ms. Y. spent some time trying to figure out how to file an application using the My Alaska system, and it was not until very late in the evening that she figured out she could file online without using My Alaska. Typing as fast as she could in a race against the midnight deadline, Ms. Y. was able to get applications in for her and her husband, but she was not able to file for the children before the website stopped accepting new applications at midnight.

Ms. Y. requested an informal appeal. The division affirmed its decision on December 30, 2004, and sent a letter explaining the decision for each child. Each letter stated that if Ms. Y.

disagreed with the decision, she could file a formal hearing request within thirty days. An appeal form was enclosed for each child. Three months after the division issued its decision at the informal appeal level, Ms. Y. sent another letter to the division on March 31, 2005, again explaining why the children's applications were late. The division treated the letter as a request for a formal hearing.

III. Discussion

The issue in this case is not whether or why Ms. Y. filed PFD applications on time for her children. The issue is why she did not request a formal hearing within thirty days of the day the division issued its informal appeal decision. A request for a formal hearing must be filed within 30 days after the division has issued a decision from an informal conference.¹ The administrative law judge may waive the deadline if strict adherence to it will work an injustice.²

In determining whether strict adherence to the appeal deadline will work an injustice, one would normally ask why the appeal was late. Ms. Y. writes in part,

I had also tried to go downtown to your office, so I could explain in person. I thought I might be able to make more sense that way, but with the kid's activities, homeschooling and our youngest son's severe eczema, I just didn't get a chance and now it was the end of the month. I don't understand the legal words that you use on the letters to me, but if someone could just answer me with an informal letter or call me.

I just don't feel our children should not get their PFDs, because of the new system that you put in. We are not doing anything illegally. When I filed a request earlier, I had thought the emails would have explained what happened.

While Ms. Y.'s letters are well written and articulate, she states that she does not understand formal language in the division's letters, and there is reason to believe her in that regard. It appears she did not understand the procedure for requesting a formal hearing, and may not have understood the difference between the formal and informal hearings.

In weighing whether to accept a late-filed formal hearing request, I also look to the likelihood of Ms. Y.'s prevailing at a formal hearing. Based on the evidence in the record, including Ms. Y.'s own statements, I find it unlikely she could prevail, for the following reason. Permanent fund dividend applications must be filed during the period that begins January 2 and ends March 31 of the dividend year.³ According to 15 A A C 23.103(g),

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.

¹ 15 A A C 05.030(a).

² 15 A A C 05.030(k).

³ AS 43.23.011.

There are no specific regulations that establish rules for filing of online applications, but the January 1 - March 31 application period applies to all dividend applications. Ms. Y. does not dispute that the applications were late.

Every year, many people miss the filing deadline, often because of very compelling and understandable reasons. With a few narrow exceptions, these applications are all denied in accordance with the law. There is no provision in the law that would permit the Y. children to be treated any differently than other Alaska residents. The law is simply quite strict; PFD applications must be filed on time, or they will be denied. Applicants who are unfamiliar with the new online system may use the old online system, or simply mail or deliver a paper application. For someone who files in January, there is plenty of time for the applicant to verify before the night of March 31 that the division has received the application. Though it is easy to empathize with Ms. Y.'s busy schedule as she raises and homeschools five children, the law does not permit the division to treat her children any differently than it treats other Alaskans.

Because it does not appear that the applicants are eligible for 2004 dividends, there are no interests of justice that require waiver of the appeal deadline, and the division's motion should be granted. The children are not eligible now, but they may apply for their dividends when they reach the age of eighteen.⁴ Ms. Y. has stated several times that she has difficulty understanding written explanations of the law, and that it is more helpful if somebody calls her and explains things directly. Rather than explaining the rule in this written decision, I am ordering the division to fulfill its duty to assist residents to qualify for dividends by contacting Ms. Y. by telephone. The division should explain to Ms. Y. how to remind her children to apply for 2004 dividends when they turn eighteen, and the importance of doing so within one year of reaching adulthood.

IV. Conclusion

The applicants' sponsor did not request a formal hearing within thirty days of the division's informal conference decision as required by 15 A A C 05.030(a). The interests of justice do not require waiver of the appeal deadline. The division's motion to dismiss should be granted. The division should call Ms. Y. and explain to her how her children can apply for their 2004 dividends when they reach the age of majority.

⁴ 15 A A C 23.133(b).

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.

IT IS FURTHER ORDERED that the Permanent Fund Dividend Division contact Ms. Y. by telephone and explain to her how her children can apply for their 2004 dividends when they reach the age of eighteen or are otherwise emancipated, and the importance of them doing so within one year of reaching adulthood.

DATED this 7th day of October, 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 B., J., M., M., and J. Y. for 2004 permanent funds dividend 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 7th 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
10/7/05