

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

IN THE MATTER OF

G. and K. M.

Case No. OAH 05-0298-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

G. and K. M. 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 M.'s requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on May 26, 2005. Ms. M. appeared by telephone. Susan Lutz represented the PFD Division by telephone. The administrative law judge finds the applicants to be eligible for 2004 dividends.

**II. Facts**

This case hinges on one material issue of fact: whether Ms. M. actually mailed her family's dividend applications to the division during the 2004 application period that ran from January 2 through March 31, 2004. The division does not have timely applications on file for either Mr. or Ms. M. When they did not receive dividends in October, 2004, the M.'s submitted late applications with sworn statements of timely filing. Ms. M. signed the sworn statements for both herself and for Mr. M. On both statements, Ms. M. indicated that the day she mailed the original applications was on or about April 20, 2004. This date was twenty days after the close of the application period.

At the hearing, Ms. M. testified that she remembered mailing the family's application envelope before the end of the application deadline. She testified that when the family did not receive their dividends, she was upset, crying, and not thinking straight when she completed the refiled application forms; for this reason, Ms. M. testified, she wrote the number "4" for the month of March. But she was certain she had filed on time. Ms. M. testified with specificity about how she filled out the applications and where she mailed them from (a new post office near Big Lake). After the hearing, Ms. M. submitted a letter from her brother-in-law stating that he remembered Ms. M. preparing all the application forms for the family and having each of them

sign their applications. Her brother-in-law did not actually witness Ms. M. putting the envelope in the mail, but he did remember her saying the next day that it had been done.

### **III. Discussion**

PFD applications must be mailed on or before March 31 of the dividend year.<sup>1</sup> If a person has mailed an application but the division does not have any record of receiving it, a person may submit a refiled application after the application deadline.<sup>2</sup> In such a case, the applicant must submit evidence of timely mailing. This evidence may consist of a mailing receipt, a delivery receipt, a notification of receipt issued by the division, or a sworn statement of timely mailing.<sup>3</sup> A sworn statement can only be used as evidence if the applicant has not previously submitted such a statement.<sup>4</sup> None of the applicants in this case have previously submitted a sworn statement.

The principal reason the division did not accept the M.'s sworn statements was that Ms. M. had written the date of mailing as "4/20/04" when she meant March 20, 2004. It is almost certain that had Ms. M. written the correct date, the refiled applications would have been accepted without further question.

The incorrect date does not present a significant reason to question Ms. M.'s credibility. If Ms. M. was really trying to say that she mailed the applications in April, clearly none of the applicants would be eligible. But the evidence shows that Ms. M. understood the concept of the application period and knew when it ended. Had it been her intent to be deceptive, she would have provided a March date even if she had actually mailed the applications in April. Had she really mailed the applications in April and been honest about it, she would have seen the futility of refiled applications and pursuing an appeal. In her written statement, Ms. M. explained that she had been very upset when she was filling out the refiled applications, and that she mistakenly wrote a four to indicate the month of March. In this case, there is no other way to view the April date than as a typographical error.

There is no way to determine with absolute certainty whether Ms. M. actually mailed applications for her family during the application period. But she did willingly appear at her hearing and testify under penalty of perjury that she did file on time. She provided specific details in her testimony about the times and places that she completed and mailed the application forms,

<sup>1</sup> AS 43.23.011; 15 AAC 23.103(a).

<sup>2</sup> 15 AAC 23.103(h).

<sup>3</sup> *Id.*

<sup>4</sup> 15 AAC 23.103(h)(3).

and she provided a letter from her brother-in-law that corroborated part of her story. There was nothing about her testimony that indicated a particular lack of credibility.

#### **IV. Conclusion**

Considering all of the evidence in this case, I find it more likely than not that Ms. M. did in fact mail timely 2004 PFD applications for herself and her family. The refiled applications for her and for Mr. M. should be granted.

#### **V. Order**

IT IS HEREBY ORDERED that the applications of G. and K. M. for 2004 permanent fund dividends be GRANTED.

DATED this 18th 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 G. and K. M. 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 18th day of November, 2005.

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

By: DALE WHITNEY  
Administrative Law Judge

Case Parties  
11/18/05