

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

IN THE MATTER OF:

B.S.

Case No. OAH 05-0320-PFD

2004 Permanent Fund Dividend

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

B.S. applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. S. was not eligible, and it denied the application initially and at the informal appeal level. Ms. S. requested a formal hearing. The PFD Division moved to dismiss the case. The administrative law judge grants the motion.

**II. Facts**

Ms. S. prepared her 2004 PFD application during the application period. Because she was planning to be out of town, Ms. S. gave her application to a friend to mail at the Anchorage Airport post office. As it turned out, Ms. S. returned to Anchorage, but she assumed her friend would still be mailing the application anyway. Through a miscommunication, the friend believed that Ms. S. would be mailing the application. In the end, neither Ms. S. nor her friend mailed an application for Ms. S. before the end of the application period.

After the end of the application period, Ms. S. filed an application. The division denied the application because it was untimely, and Ms. S. requested an informal conference. The division affirmed its decision on November 29, 2004. Ms. S. requested a formal hearing on April 15, 2005.

Towards the end of 2004 and early 2005, Ms. S. suffered a number of health and legal problems. These problems explain the delays in Ms. S.'s filing and prosecuting of her appeal. But they are not the reason the original application was untimely. Ms. S.'s reliance on and miscommunication with her friend are the only reasons she did not file her application before the end of the application period on March 31, 2004.

### III. Discussion

There are two important deadlines that are the subject of this case. The first is the deadline for filing a PFD application no later than March 31 of the dividend year.<sup>1</sup> The second deadline is the requirement that a request for a formal hearing be filed within thirty days of the division's decision in an informal conference appeal.<sup>2</sup> The administrative law judge may waive the second deadline if necessary to avoid an injustice.<sup>3</sup> The first deadline is a strict rule that may not be waived except in certain limited circumstances that do not apply to this case.<sup>4</sup>

Ms. S. has been suffering very serious medical challenges during the appeal of this case, including cancer treatment. If there is a possibility that she might prevail on the underlying issue, she should be allowed to proceed with a hearing. If there appears to be no possibility that Ms. S. could prevail on the underlying issue, however, no interest of justice would require a hearing. Therefore, I will examine the underlying issue, which is that Ms. S.'s application was not filed before the end of the application period.

Throughout the appeal process, Ms. S. has consistently raised one argument on the underlying issue that has not been addressed. In her opposition to the division's Motion for Dismissal, Ms. S. writes,

I have inquired continuously as to at one time (I believe) the "grace" status of one late PFD filing for any St. of Ak. Resident - to be granted with the awareness of this being a once in a lifetime exception and I have asked for information as to whether this is correct or has been revoked at some time from PFD's original constitution, I have not received a reply regarding this issue at anytime during several communications with St. of AK PFD relevant to this appeal and imagine from all I've received to date, that it's possibly my only leg to stand on.

The exceptions to the strict application deadline are very limited.<sup>5</sup> When a child's parents fail to apply on time, the child may file on his or her own behalf upon reaching the age of 18. Certain people who are wards of social service agencies may file late applications when the agency is responsible for filing the application and has failed to do so on time. When certain disabled people are prevented from filing on time by their disability, they may file late applications. Under a newer rule, certain members of the military may file late applications if they can verify they were in

<sup>1</sup> AS 43.23.011.

<sup>2</sup> 15 A A C 05.030(a).

<sup>3</sup> 15 A A C 05.030(k).

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

<sup>5</sup> *Id.*

combat situations during the application period.<sup>6</sup> These are the only exceptions to the March 31 filing deadline.

I believe the "one-time exception" that Ms. S. references is contained in 15 A A C 23.103(h). This regulation does not apply to late applications; it applies to applications that were timely filed, but for unknown reasons are not in the division's records. Most often, it is assumed that this means the application was actually mailed on time, but lost by the post office. In this case, applicants may reapply after the deadline if they can prove actual timely filing of an application. The regulation allows three ways a person may prove timely filing. The first way is to produce a mailing receipt from the post office showing that the application was mailed during the application period. The second way is to produce a notification from the PFD Division that it has received the application on time, or to produce a return receipt from the post office showing that the application was actually delivered to the division before the end of the application deadline. The third and final way to prove actual filing is to submit a notarized affidavit stating that the application was actually filed on time. This third method of proving timely filing is only permitted if the applicant has not previously reapplied for a dividend; thus, it is only available to a person once in a lifetime. It should be noted that this regulation does not allow a late application; it allows refileing of a timely application when the division or the postal service has lost the timely application.

If Ms. S. had actually mailed her application on time, but the division or the post office had lost it, she would be entitled, just one time, to prove by signing an affidavit that she really did mail the application on time. But because she did not actually file an application until after the deadline, and there is no suggestion that she would fall within one of the other limited exceptions, Ms. S.'s application cannot legally be granted.

#### **IV. Conclusion**

Ms. S.'s health issues would be a good reason to deny the division's motion to dismiss and afford Ms. S. an opportunity to be heard if there were a reasonable chance of her prevailing at the hearing. It would, however, be of no benefit to Ms. S. to conduct a hearing when it is clear that, even considering all the evidence in a light most favorable to her, it would not legally be possible to grant her 2004 PFD application. Therefore, I find that there are no interests of justice that require waiver of the appeal deadline, and that the division's motion to dismiss this case should be granted.

**V. Order**

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

DATED this 3rd 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.S. 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 3rd day of October, 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  
11/3/05