

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

IN THE MATTER OF

G.S.

2006 Permanent Fund Dividend

Case No. OAH 08-0084-PFD

Agency case no. 2006-055-7072

ORDER GRANTING MOTION TO DISMISS

I. Introduction

G.S. timely applied for a 2006 permanent fund dividend. The Permanent Fund Dividend Division ("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 division moved to dismiss the case on the grounds that Ms. S.'s request for a formal hearing was not timely. The division's motion is granted.

II. Facts

The division sent Ms. S. notice that it had denied her application for a 2006 dividend on December 1, 2006. Ms. S. timely requested an informal conference on December 29, 2006. After an informal conference the division affirmed its decision and sent Ms. S. notice of the decision, along with instructions and a form for requesting a formal hearing, on May 5, 2007. The division sent this notice the New York address that Ms. S. had provided on her application and had been using as the return address on all of her correspondence up to this time. The Postal Service returned this notice to the division as undeliverable with no forwarding address.

In October of 2007 Ms. S. wrote to the division inquiring about the status of her application. Below her signature she provided a California address. There is no evidence in the record that the division responded to this letter. On December 31, 2007, Ms. S. wrote to the director of the PFD Division again requesting information on the status of her informal conference, and stating that she could be reached at the California address, which she again provided. It is unclear when and in what manner the division responded to this letter, but at some point Ms. S. did receive a copy of the informal appeal decision and the formal hearing request form. On February 14, 2008, Ms. S. faxed a copy of her formal hearing request form to the division, and the division received a hard copy in the mail nine days later. The formal hearing request form contains a handwritten notation stating that "appeal sent to wrong address, I never received it last

year. I did not receive this form until this month, Jan 08." With her formal hearing request, Ms. S. provided a change of address form, changing her address to Salinas, California.

### III. Discussion

Under the Department of Revenue's regulations, a formal hearing must be requested within 30 days after the informal conference decision is issued.<sup>1</sup> This deadline may be waived if strict adherence to the deadline would work an injustice.<sup>2</sup> According to 15 A A C 23.103(c),

An individual applying for a dividend must provide a current mailing address with the application. If a corrected mailing address for the individual is provided to the department by United States Postal Service or a foreign postal service, the department may use that address. If the individual's mailing address changes before the dividend is paid or during the appeal or collection process, the individual must notify the department in writing of the change in address...

There does not appear to be any extraordinary reason in this case that Ms. S. would have been unable to provide the division with a current address. In a letter supporting her appeal, Ms. S. indicates that she had been moving frequently, and apparently had been having a dispute of some kind with her daughter. She writes in part,

My reasons for addresses are these: all mail from Salinas goes to San Jose to be stamped. M. Circle was my daughter's address when I was visiting. It was her email I used while there. I left about Nov 30, 06. I didn't get a UPS box until I needed an address for drivers license & to receive title. I had a P.O. box in Wasilla & it expired but they were not good at forwarding & I never got much even when I sent & paid envelope. Some N. Pole where I had general delivery. After I left I only had general delivery until I got the present U.P.S. in 07. Because of difficulties with mail I finally asked my daughter to receive important stuff & forward it. That was the N.Y. address. Then last year she sent it back.

The division sent Ms. S. its informal conference decision on May 5, 2007, to the most recent address it had on file for her. A request for a formal hearing was due by June 4, 2007. The soonest that the division could have known where to send the informal appeal decision for Ms. S. to actually receive it when the division received her letter dated October 5, 2007, four months after the appeal deadline had run.

<sup>1</sup> 15 AAC 05.030(a).

<sup>2</sup> 15 AAC 05.030(k).

#### IV. Conclusion

Because she did not file a timely request, Ms. S. is not entitled to a formal hearing. The division's motion to dismiss is GRANTED, and no further proceedings will be scheduled in this matter.

DATED this 29th day of April, 2008.

By: DALE WHITNEY  
Administrative Law Judge

### Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of May, 2008.

By: Dale Whitney  
Administrative Law Judge

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

PFD Division  
5/28/08