

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

IN THE MATTER OF )  
 )  
 KYLE M. AND CHARISMA C. SCHAUB )  
 )  
2005 Permanent Fund Dividend )

Case No. OAH 06-0233-PFD

Received JDIO  
SEP 27 2006

**DECISION & ORDER**

**I. Introduction**

Mr. Schaub applied for a 2005 permanent fund dividend for himself and his daughter, Charisma. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Mr. Schaub requested a formal hearing. Administrative Law Judge Kay L. Howard heard the appeal on May 5, 2006. Mr. Schaub appeared in person; Thomas Coté represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

**II. Facts**

Mr. Schaub signed his and his child's PFD applications on March 12, 2005.<sup>1</sup> He claims he then delivered the applications on the same day to the Sand Lake post office. The applications did not arrive at the Division until April 18, 2005.<sup>2</sup> The postmark date on the application envelope reads April 15, 2005, and the envelope itself is dirty and appears to have been stepped or driven on.

The Division's position is that Mr. Schaub simply failed to mail the applications on time. Mr. Schaub's explanation is that the application envelope fell off the mail truck as it was being transported to the main Anchorage mail facility at the airport. He asserted the Sand Lake mail is not postmarked until it arrives at the main facility, which would account for the late postmark: whoever found the envelope on or about April 15, 2005, merely dropped it into a mail box and it was postmarked at the airport before being sent to Juneau.

**III. Discussion**

In order to qualify for a permanent fund dividend, a person must file an application.<sup>3</sup> Applications must be filed during the period from January 2 through March 31 of the dividend year.<sup>4</sup> The only exceptions to the filing deadline allowed by law are for certain disabled people

<sup>1</sup> Exh. 1 at pg. 1.

<sup>2</sup> *Id.*

<sup>3</sup> AS 43.23005(a)(1).

<sup>4</sup> AS 43.23.011.

when their disability prevents timely filing, for certain children when their parents or guardians do not timely apply on their behalf, and for certain military members who were eligible for imminent danger or hostile fire pay during the application period.<sup>5</sup> According to 15 AAC 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.

Mr. Schaub claims he was told by a postal service official that the most likely explanation for the soiled envelope and late postmark was mail falling off a truck and being found and dropped in the mail by someone later. Mr. Schaub submitted a letter prepared by Joshua C. McCoy, from the Alaska District of the U.S. Postal Service, but the letter does not state specific circumstances of postal service error. Rather, Mr. McCoy, who inspected the envelope that contained Mr. Schaub's application, stated he could find "no specific evidence that the letter was delayed by the United States Postal Service."<sup>6</sup> Thus, the requirements of 15 AAC 23.103(g) have not been met.

The laws cited above make it clear that the relevant date is not the date the application was signed, but rather when the application was postmarked or delivered to the Division. Because the applications in this case were mailed and received by the Division after the end of the application period, the Division was correctly following the law when it made the decision to deny the applications.

When a child's parents forget to apply on time, the child may apply for the lost dividend when she becomes an adult. Thus, when Charisma turns eighteen years old, she may apply for her 2005 dividend. Because Charisma is very young, Mr. Schaub should remember this and remind Charisma to apply for a 2005 dividend as soon as she turns eighteen years old. Charisma must apply before she turns nineteen, or this opportunity to receive a 2005 dividend will be lost forever.

#### IV. Conclusion

Because Mr. Schaub did not apply during the application period, the division was correctly following the law when it made the decision to deny the applications in this case. Charisma Schaub may apply for her 2005 dividend when she becomes an adult.

<sup>5</sup> *Id.*; 15 AAC 23.133.

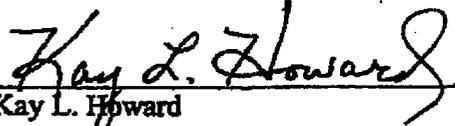
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**V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of Kyle M. and Charisma C. Schaub for 2005 permanent fund dividends be AFFIRMED.

**IMPORTANT NOTICE FOR MINOR CHILDREN:** The child in this case may be eligible to apply for a 2005 dividend upon reaching 18 years of age or otherwise emancipating. This application must be made before the child reaches the age of 19. It is important that family members remember this right and remind the child to apply as soon as the child becomes an adult.

DATED this 18<sup>th</sup> day of July, 2006.

By: 

Kay L. Howard  
Administrative Law Judge

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<sup>1</sup> Exh. 4 at pg. 3.

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 AS 25.27.210 within 30 days after the date of this decision.

DATED this 23 day of August, 2006.

By: \_\_\_\_\_

Signature

Ton Bartis

Name

Deputy Commissioner

Title

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

Kyle Schaub

PFD Division

Signature

Date

Neil Roberts 8/23/06