

HB

380



Permanent Fund Dividend Division  
 Document Processing Section  
 PO Box S-0460  
 Juneau, AK 99811-0460

RECEIVED

APR 4 1990

REACH, INC.

NOTICE OF DENIAL OF ALASKA PERMANENT FUND DIVIDEND

Jimmy A Mercurief P O Box 34197 Juneau AK 99803	Applicant's Name Jimmy A Mercurief	
	Applicant's Social Security Number 574460677	
	Sponsor's Social Security Number (if applicable)	
	Document Locator Number 90524808	Dividend Year 1989

A permanent fund dividend for the above named applicant has been denied for the reason(s) stated below.

If you disagree with this denial, you may appeal the decision. In order to appeal you must complete and mail the enclosed Request for Appeal (form 04-190) to the Department of Revenue within 60 days from the date of this notice. If you appeal this decision, you must return one copy of this notice with your appeal.

Reason(s) for the denial:

**LAW AND REGULATIONS:**

AS 43.23.055(2), 15 AAC 23.160 (g)

A person must file an application on or before June 30, 1989, in order to receive the 1989 Permanent Fund Dividend.

**FINDINGS OF FACT:**

Your application was postmarked or personally delivered to one of our offices after June 30, 1989.

**CONCLUSIONS FROM THE FACTS:**

As your application was postmarked or personally delivered after June 30, 1989, you do not qualify for a 1989 Permanent Fund Dividend.

Mailed  
4/6/90  
Bell

Permanent Fund Dividend Division Office	Date 04-02-90
---	------------------

KEEP NOV. 8, 1989

Alaska Department of Revenue  
P.O. Box S-0460  
Juneau, Alaska 99811-0460



015  
FV 2118  
3200434

PRE-SORT  
FIRST CLASS  
U.S. POSTAGE  
PAID  
Juneau, AK  
Permit No. 272

ALBERTA S MARTIN  
BATCH NO: 02643 DLN: 90524808  
JEFF D LAPRABLE  
BATCH NO: 02643 DLN: 90324808  
JIMMY A MERCULIEF  
BATCH NO: 02643 DLN: 90524808

TO:  
A S MARTIN  
PO BOX 34197  
JUNEAU AK 99803

\*\* LATE FILED APPLICATIONS \*\*  
\*\*\* NOTE \*\*\*  
ASSIGNMENTS, OTHER THAN TO GOVT  
AGENCIES, WILL NOT BE HONORED.

IMPORTANT RECEIPT  
SAVE FOR FUTURE REFERENCE

06-100A (Rev. 3/89)

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### PERMANENT FUND DIVIDEND DIVISION

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING  
P.O. BOX S-0463  
JUNEAU, ALASKA 99811-0400

April 11, 1990

Jeff D. Larrabee  
%REACH  
BOX 34197  
Juneau, AK 99803

Dear Mr. Larrabee:

Re: 1989 Permanent Fund Dividend Appeal(s)

This is to acknowledge receipt of your Request for Appeal.

The Department works appeals on a first-received, first-worked basis. Due to the number of appeals received before your appeal, it may be several months before your case will be heard.

In case you change your address or phone number, please notify the Department by sending in a change of address form to: Alaska Department of Revenue, Permanent Fund Dividend Appeals, P.O. Box S-0463, Juneau, Alaska 99811 so I will be able to reach you when your appeal is worked.

Thank you for your cooperation and patience.

Sincerely yours,

*Tracy Paige for Tracy Buchheim*  
Tracy Buchheim  
PFD Specialist I  
(907) 465-2001

TB/tdp

*This is but one of a series of 5 individual responses and replies - used as an example -*

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 4, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-18-90

FINANCE

The JUDICIARY Committee considered:

HB 380

HOUSE BILL NO. 380

PFD'S FOR INCOMPETENT PERSONS

"An Act relating to permanent fund dividends for incompetent individuals; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 380 (SUD)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) 4-4-90 Rev
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

\_\_\_\_\_  
*Matthew...*  
\_\_\_\_\_  
*Peter...*  
\_\_\_\_\_  
*Mike Miller*  
\_\_\_\_\_  
*...*  
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*...*  
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	Do Not Pass	No Rec	Amend
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\_\_\_\_\_  
*Peter...* / *Matthew...*  
Chairman's Signature

Original sponsor(s): REP. HUDSON, MacLean, Zawacki, Hanley

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 380 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for  
7 disabled individuals; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 43.23.005(c) is amended to read:

11 (c) A parent, guardian, or other authorized representative may  
12 claim a permanent fund dividend on behalf of an unemancipated minor or  
13 on behalf of a disabled or an incompetent individual who is eligible  
14 to receive a payment under this section.

15 \* Sec. 2. AS 43.23.015(d) is amended to read:

16 (d) The application and certification of residency of an un-  
17 emancipated individual under 18 years of age or of a disabled or an  
18 incompetent individual must be signed by the individual's parent,  
19 legal guardian, or other authorized representative.

20 \* Sec. 3. AS 43.23.015(f) is amended to read:

21 (f) A minor or a disabled or an incompetent individual may not  
22 maintain a claim against the state or an officer or employee of the  
23 state based on the manner in which the parent, guardian, or authorized  
24 representative other than a public agency of the state managed or  
25 disposed of permanent fund dividends received on behalf of the minor  
26 or disabled or incompetent individual.

27 \* Sec. 4. AS 43.23.025(a) is amended to read:

28 (a) By October 1 of each year the commissioner shall give public  
29 notice of the value of each permanent fund dividend for that year.

1 The public notice shall contain a statement disclosing the amount by  
2 which each individual dividend has been reduced in order to pay the  
3 costs of administering the program and the hold harmless provisions of  
4 AS 43.23.075. The commissioner shall also include the statement on  
5 the stub attached to each individual dividend check. The commissioner  
6 shall determine the value of a permanent fund dividend by

7 (1) determining the total amount available for dividend  
8 payments, which equals

9 (A) the amount of income of the Alaska permanent fund  
10 transferred to the dividend fund under AS 43.23.045(b) during the  
11 current year;

12 (B) plus the unexpended and unobligated balances of  
13 prior fiscal year appropriations that lapse into the dividend  
14 fund under AS 43.23.045(d);

15 (C) less the amount necessary to pay dividends from  
16 the dividend fund in the current year under AS 43.23.055(3) and  
17 (7);

18 (D) less the amount necessary to pay dividends from  
19 the dividend fund due to eligible applicants who, as determined  
20 by the department, filed for a previous year's dividend by the  
21 filing deadline but who were not included in a previous year's  
22 dividend computation;

23 (2) determining the number of individuals eligible to  
24 receive a dividend payment for the current year; and

25 (3) dividing the amount determined under (1) of this sec-  
26 tion by the amount determined under (2) of this section.

27 \* Sec. 5. AS 43.23.055 is amended to read:

28 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

29 (1) annually pay permanent fund dividends from the dividend  
30

1 fund;

2 (2) adopt regulations under the Administrative Procedure  
3 Act (AS 44.62) that establish procedures and time limits for claiming  
4 a permanent fund dividend; the department shall set the time limit for  
5 applications for permanent fund dividends so that the number of eligi-  
6 ble applicants is determined by October 1 of the year for which the  
7 dividend is declared and permanent fund dividends for a year are paid  
8 before April 30 of the year following that year;

9 (3) adopt regulations under the Administrative Procedure  
10 Act (AS 44.62) that establish procedures and time limits for an indi-  
11 vidual upon emancipation or upon reaching majority to apply for perma-  
12 nent fund dividends not received during minority because the parent,  
13 guardian, or other authorized representative did not apply on behalf  
14 of the individual;

15 (4) assist residents of the state, particularly in rural  
16 areas, who because of language, disability, or inaccessibility to  
17 public transportation need assistance to establish eligibility and to  
18 apply for permanent fund dividends;

19 (5) annually determine, in cooperation with the Department  
20 of Corrections, the number and identity of individuals ineligible for  
21 a permanent fund dividend under AS 43.23.005(d); [AND]

22 (6) adopt regulations that are necessary to implement  
23 AS 43.23.005(d);

24 (7) adopt regulations that establish procedures for the  
25 parent, guardian, or other authorized representative of a disabled  
26 individual to apply for prior year permanent fund dividends not re-  
27 ceived by the disabled individual because no application was submitted  
28 on behalf of the individual.

29 \* Sec. 6. AS 43.23.095 is amended by adding a new paragraph to read:

1                   (9) "disabled" means physically or mentally unable to  
2 complete and sign an application due to a serious emotional distur-  
3 bance, visual, orthopedic, or other health impairment, or develop-  
4 mental disability that is attributable to mental retardation, cerebral  
5 palsy, epilepsy, autism or other cause; "disabled" does not mean  
6 "incompetent";

7 \* Sec. 7. The Act takes effect January 1, 1991.  
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# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V  
Juneau, Alaska  
99811  
(907)465-3744 or 4991

## COMMITTEES

Transportation  
Resources  
Foreign Trade

## FINANCE SUBCOMMITTEES

DOT/PE  
C & RA

April 4, 1990

Representative Peter Goll  
and  
Representative Max Gruenberg,  
CoChairmen - House Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

Dear Representatives Goll and Gruenberg:

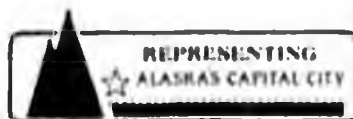
CSHB 380(SA) will soon be transmitted to the House Judiciary Committee for consideration. The legislation relates to permanent fund dividends for disabled individuals, and seeks to require the Department of Revenue to adopt regulations to enable the parent, guardian or authorized representative of a disabled individual to apply for prior years dividends.

I introduced HB 380 after being advised by Mr. Rod Moline, Executive Director of REACH, that some of his disabled clients had missed receiving their permanent fund dividends because no timely application had been made on their behalf.

Enclosed is a copy of a letter from Mr. Moline, as well as a copy of a letter from Ms. Rebecca Graham, Staff Attorney for Advocacy Services of Alaska. Ms. Graham has made available copies of briefs she has filed on behalf of her client, and the briefs state rather well the problems disabled Alaskans have encountered relating to their application process with the Department of Revenue.

Also enclosed is a copy of a recent letter from Commissioner Hugh Malone, Alaska Department of Revenue, advising me that effective April 1, 1990, regulations have been adopted to address the problem HB 380 seeks to solve.

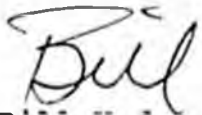
However, according to a legal opinion from Ms. Tamara Cook, Director of Legislative Legal Services, there is no statutory authority for the promulgation and adoption of this regulation.



The passage of HB 380 will not only provide statutory authority, but it will also be a policy in statute. Regulations are changeable at any time, and I believe this policy is necessary to protect those Alaskans who suffer disabilities as defined in this legislation.

Your favorable consideration to place this bill on the House Judiciary Committee schedule at the earliest possible date will be very much appreciated.

Respectfully,

A handwritten signature in cursive script, appearing to read "Bill Hudson".

Bill Hudson

BH:lh

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 5, 1990

SUBJECT: Permanent fund dividends for disabled  
individuals (CSHB 380(SA))

TO: Representative Bill Hudson

FROM: Tamara Brandt Cook <sup>TBC</sup>  
Director  
Division of Legal Services

You have supplied me with a copy of a letter from Hugh Malone, commissioner of revenue in which he suggests that HB 380 is not needed because of a regulation adopted by the department that provides:

If the department does not have a timely filed application on file for an individual, that individual or an authorized representative may submit an application for a prior year dividend, if the individual was disabled as defined in 15 AAC 23.990(6) during the application period.

You have asked me to comment on this letter with respect to CSHB 380(SA). That bill deletes the word "incompetent" where it appears in AS 43.23 and substitutes the word "disabled." A statutory definition of "disabled" is included for the chapter that matches the definition under 15 AAC 23.990(6). In addition, the bill provides specific authority to the department of revenue to adopt regulations that establish procedures for a representative of a disabled individual to apply for prior year dividends on behalf of that individual.

I agree with Commissioner Malone that much of the purpose behind CSHB 380(SA) is accomplished through adoption of the regulation. However, there are several reasons why the legislature may still wish to enact this bill. First of all, what can be done by regulation can be undone by regulation. If the legislature wishes to retain control over this issue, it must enact law. Secondly, CSHB 380(SA) now goes further

Representative Bill Hudson  
Page 2  
April 5, 1990

than the regulation. By changing AS 43.23.005(c), the bill expands the group of people on whose behalf a representative may apply for a current year dividend initially -- from incompetent people to disabled people. The regulation only addresses applications for prior year dividends, so it is not substantively identical to the bill. Lastly, AS 44.62.-030 provides

Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE.

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

The department of revenue currently has statutory authority to adopt regulations relating to the permanent fund dividend program under AS 43.23.055. Arguably, the regulation at issue goes beyond the authority granted under AS 43.23.055 and does more than can be justified under AS 44.62.030 as reasonably necessary to carry out the purpose of the statutes relating to the dividend program. The bill, by providing specific authority to the department to adopt regulations establishing procedures for a representative of a disabled individual to apply for prior year dividends, removes the question as to the authority of the department to adopt this particular regulation.

TBC:pl  
WKP4/024

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January 18, 1990

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
HB 380

*PFD's for Incompetent Persons*

Received January 8, 1990  
by Rep. Hudson

Heard April 3, 1990

Adopted CSHB 380 (SA) April 3, 1990

Passed Out of Committee April 3, 1990  
4 Do Pass  
1 No Recommendation

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: JUDICIARY  
FINANCE

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered:

HB 380

HOUSE BILL NO. 380

PFD'S FOR INCOMPETENT PERSONS

"An Act relating to permanent fund dividends for incompetent individuals; and providing for an effective date."

**RECOMMENDATIONS:**

- be replaced with CSHB 380 (SA)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: \_\_\_\_\_  
(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note DOR
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

\_\_\_\_\_  
*Wayne Hendley*  
 \_\_\_\_\_  
*Scott Johnson*  
 \_\_\_\_\_  
*Jim Swanson*  
 \_\_\_\_\_  
*Paul Jacobs*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING:**  
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Wayne Hendley</i>		X	

*Wayne Hendley*  
 \_\_\_\_\_  
 Acting Chairman's Signature

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_  
Title: An Act relating to permanent fund dividends for incompetent indiv.  
Sponsor: HUDSON  
Requestor: \_\_\_\_\_

Agency Affected: Revenue  
BRU: Permanent Fund Dividend Division  
Components: Permanent Fund Dividend Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: None required.

Prepared By: Ervin Jones  
Division: Permanent Fund Dividend Division

Phone: 465-2323  
Date: March 30, 1990

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 4/1/90

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Item 3

# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V  
Juneau, Alaska  
99811  
(907)465-3744 or 4991

COMMITTEES

Transportation  
Resources  
Foreign Trade

FINANCE SUBCOMMITTEES

DOT/PF  
C & RA

January 30, 1990

Representative Red Boucher,  
Chairman  
House State Affairs Committee  
Juneau, Alaska

Dear Representative Boucher:

Enclosed is a copy of a letter together with copies of briefs I recently received from Rebecca Graham, Staff Attorney for Advocacy Services of Alaska.

Ms. Graham discusses her past efforts on behalf of incompetent individuals who had not received a Permanent Fund dividend.

My assertion that the Department of Revenue needs direction by statute is supported by the description of the Department's arbitrary actions relating to claims brought by Ms. Graham.

After you have reviewed this material, I hope you will agree to schedule HB 380 for a hearing.

Respectfully,

*Bill*  
Bill Hudson

BH:lh

Enclosures





ADVOCACY SERVICES OF ALASKA

615 East 82nd, Suite 101  
Anchorage, AK 99518  
(907) 344-1002 TDD  
Toll Free 800-478-1234  
Fax (907) 349-1002

230 South Franklin  
Juneau, AK 99801  
(907) 586-1627 TDD  
Fax (907) 586-1066

250 Cushman, Suite 3H  
Fairbanks, AK 99701  
(907) 456-1070 TDD  
Fax (907) 456-1080

January 18, 1990

Representative Bill Hudson  
P.O. Box V  
Juneau, AK 99811

Attn: Landa

Re: Permanent fund dividend checks for people  
with disabilities

Dear Representative Hudson:

I spoke today with Rod Moline of REACH in Juneau about the issue of people with developmental disabilities who miss filing deadlines for requesting their permanent fund dividends. He called me because he was aware of a case I recently settled with Department of Revenue. He stated that your office is interested in introducing some legislation to deal with this problem.

I have enclosed a copy of the briefs in the court appeal that I brought on behalf of a man with mental retardation. Basically the facts and issues are set out in the brief of appellant. After this was filed, the court remanded the case back to the Department of Revenue for a hearing to get more facts.

We never had a hearing on any of the issues because the State settled with my client and gave him his 1986 Permanent Fund Dividend. Subsequently the Department also settled with a client of this agency who has a diagnosis of mental illness and had also not applied for a PFD.

I have removed the name of my client to protect his dignity although this case is a public record.

I would be happy to provide any more information about this case or anything else that might be helpful to bring about a statutory resolution to this. I do not think that the current policy of simply settling with those claimants who appeal will be fair to those who have no way of knowing that this is available.

Sincerely,

Rebecca E. Graham  
Staff Attorney

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

E J G )  
Appellant, )  
v. ) Case No. 3AN-88-5268 CI  
HUGH MALONE, Commissioner, )  
Department of Revenue, State )  
of Alaska, in his official )  
capacity. )

AN ADMINISTRATIVE APPEAL FROM A FINAL DECISION  
OF THE DEPARTMENT OF REVENUE

REPLY BRIEF OF APPELLANT

Rebecca E. Graham  
Attorney for Appellant  
ADVOCACY SERVICES OF ALASKA  
325 E. 3rd Ave., #400  
Anchorage, Alaska 99501  
(907) 274-3658

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I.

A. MR. G WOULD BE DENIED DUE PROCESS IF NOT ALLOWED TO PRESENT THE ISSUES IN THIS APPEAL.

The State contends that all issues raised by G in this appeal are outside the scope of the administrative proceeding held by the Department of Revenue. The Department quotes AS 43.23.015(g) which states in part:

An appeal under this section does not entitle the aggrieved individual to a trial de novo. The appeal shall be based on the record of the administrative proceeding from which appeal is taken and the scope of appeal is limited to matters contained in the record of the administrative proceeding.

However, Mr. G was not represented by counsel at the administrative hearing and in fact, did not even participate in the hearing in any meaningful way. He was assisted by Ms. Bonnie Darnell, the Administrator of Full Circle Boarding Home, where he lives. [Tr. 14]

Mr. G stated his name at the outset of the hearing [Tr. 14] and his further involvement in the hearing was to occasionally hit a button on the phone he was using. [See Tr. 14, 15 and 16.] It was assumed by everyone involved that Mr. G was not capable of participating any further in the hearing; the Department of Revenue allowed another person to do all of his speaking for him. [Tr. at 17] He certainly was not able to develop any legal

arguments as to why he was entitled to receive his 1986 Permanent Fund Dividend nor was his non-lawyer assistant. It is indeed surprising that the Department of Revenue allowed the hearing to go forward under these circumstances.

Where a deprivation of a government benefit is involved, the United States Supreme Court has required a high degree of due process. See Goldberg v. Kelly, 397 U.S. 254 (1970) (requiring a procedure much like a trial for deprivation of welfare benefits). Certainly an entitlement program like the Alaska Permanent Fund Dividend rises to the level of requiring similar due process protections. See Zobel v. Williams, 457 U.S. 55, 60 (1982).

Since Mr. G was not able to present the constitutional arguments at the earlier hearing due to his disability and the manner in which the hearing was conducted, it would be a denial of due process to dismiss the issues he raises now. A more equitable solution would be to remand the case to the Department of Revenue for a hearing on the issues raised here if the court rules that such issues should not be raised at this time.

- B. THIS COURT HAS THE DISCRETION TO RELAX THE RULES REGARDING ISSUES RAISED ON APPEAL.

As the State correctly observes, issues not raised in the lower tribunal are generally waived. West v. First National Bank of Fairbanks, 659 P.2d 1233, 1234 n.2 (Alaska

1983). However, the Alaska Supreme Court has recognized some exceptions to the general rule. In Vesr, the Court itself required briefing of an issue neither party had raised in the lower court. Id. at 1234. And in Matter of L.A.M., 727 P.2d 1056, 1059 (Alaska 1986), the court stated:

Unless it constitutes plain error, we ordinarily will not consider a claim of error if it was not both argued in the trial court and properly raised on appeal. [Citations omitted.] In order for this court to find plain error, the error must affect substantive rights and be obviously prejudicial. [Citation omitted.] As we stated in Miller v. Sears, 636 P.2d 1183, 1189 (Alaska 1981), "[p]lain error exists where an obvious mistake has been made which creates a high likelihood that injustice has resulted."

There the court found plain error where a parent alleged improper notice in an Indian Child Welfare Act case (plain error not being limited to the Criminal Rules as alleged in Appellee's Brief). In other words, where due process would be denied by failing to allow the issue to be heard, the appellate court may consider an issue not raised at the hearing level. Further, the court has noted that "relaxation of the appellate rules might be especially appropriate where a layman represents himself." Miller v. City of Fairbanks, 509 P.2d 826, 829 n.8 (Alaska 1983).

In a case such as this where the appellant was admitted by all concerned to lack the ability to handle the

hearing himself, the dismissal of his constitutional arguments would be a denial of due process. If this court accepts that the factual issues would be better addressed by an administrative hearing, remand is a more appropriate remedy, preserving due process rights, than dismissal of Mr. G 's claims.

## II.

### THE DEPARTMENT OF REVENUE DOES NOT PROVIDE SUFFICIENT ASSISTANCE TO DISABLED APPLICANTS.

The State has listed some ways in which it provides assistance to people with disabilities in applying for Permanent Fund Dividends and concludes that these are sufficient under AS 43.23.055(4) which requires such assistance. However, the methods of assistance listed by the Department are completely inadequate for a person with a mental disability. Without an outreach program of some kind, it would be impossible for a person without the capability to read to even know that it was time to make an application. Another alternative is to leave open the filing deadline for all those people who are incapable of knowing of their entitlement to a Permanent Fund Dividend. But to merely state that when a person contacts the Department of Revenue, they will be given assistance misunderstands the nature of many disabilities. Unless every developmentally disabled person in the state of Alaska were in a care-taking relationship or

had a legal guardian, the system contemplated by the State in its brief would not work.

Contrary to the State's position, this is a question of law which should be evaluated by this court under the substantial evidence test. Kelly v. Zamarello, 486 P.2d 906, 916 (Alaska 1971). The Department of Revenue is not charged with having expertise in assisting people with disabilities. It is a question of law as to whether they have fulfilled their statutory mandate to make such assistance available.

As stated above, to deny Mr. G the chance to raise this statutory issue would be a denial of due process. Again, remand for further factual development as the court finds necessary would be a more appropriate remedy than dismissal.

### III.

#### A. THERE IS NO RATIONAL BASIS FOR TREATING MR. G DIFFERENTLY FROM MINORS APPLYING FOR PERMANENT FUND DIVIDENDS.

The State does not deal in its brief with whether there is a rational basis for treating Mr. G differently for purposes of receiving his 1986 Permanent Fund Dividend than the way minors are treated by law. They argue instead that this is a decision which the Department could make in any way which it saw fit. However, where a statute leaves open the method by which an agency may act, that agency must

still act constitutionally. Further that action has nothing to do with agency expertise. A constitutional question of whether equal protection has been denied does not come within the special knowledge and expertise of the Department of Revenue. This is an issue which the courts are uniquely charged with deciding. Kelly v. Zamarello, 486 P.2d 906, 916 (Alaska 1971).

B. IT IS CONSTITUTIONAL TO PROVIDE DIFFERENT TREATMENT FOR PEOPLE WITH MENTAL DISABILITIES.

Because the Court in City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), refused to make people with mental retardation a suspect class for purposes of equal protection claims, they left open the possibility of treating such people differently. Id. at 433-445.

[L]egislation... singling out the retarded for special treatment reflects the real and undeniable differences between the retarded and others. That a civilized and decent society expects and approves such legislation indicates that governmental consideration of those differences in the vast majority of situations is not only legitimate but also desirable.

Id. at 444.

Our legislature has required that the State provide assistance to people with disabilities in applying for and proving eligibility for Permanent Fund Dividends. The question for the court is whether that assistance was ade-

quate to assist people such as Mr. G , not whether to do so would be constitutionally impermissible.

#### IV.

THE STATE OF ALASKA HAS DISCRIMINATED AGAINST MR. G ON THE BASIS OF HIS DISABILITY.

The Alaska Statutes state at AS 18.80.255(3):

It is unlawful for the state or any of its political subdivisions... to refuse or deny to a person any... state... funds, services, goods, facilities, advantages or privileges because of physical or mental disability.

As stated in appellant's brief, this section of the Alaska Statutes is substantially similar to federal law found at 29 U.S.C. § 794 (§ 504 of the Rehabilitation Act of 1973).<sup>1</sup> Federal decisions and the federal government have consistently required "reasonable accommodation" of a person's disabilities. (See e.g., Nelson v. Thornburgh, 567

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<sup>1</sup> That Act provides:

No otherwise qualified individuals with handicaps in the United States... shall, by reason of the handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service....

Section 7(8) of the Act also tracks the definition of disability found at AS 18.80.300(12).

F. Supp. 369 (E.D. Pa. 1983), aff'd mem., 732 F.2d 146 (3d Cir. 1984), cert. denied, 105 S.Ct. 955 (1985).) This has included requiring what might be seen as "preferential treatment" such as the requirement that deaf people be provided with sign language interpreters and telecommunication devices so that they may be able to receive the benefits of governmental programs. An excellent analysis of what is required is found in Kaufman, Federal and State Handicapped Discrimination Laws: Toward an Accommodating Legal Framework, 18 Loy. U. L.Rev. 1119 (1987). As stated above, it is constitutionally permissible for people with mental retardation to be treated differently than others. See Cleburne, supra.

Similarly, the accommodation necessary for a person with a developmental disability is that the filing deadline be waived in those cases where it would impermissibly deny the person privileges of residency in the State of Alaska under AS 18.80.255(3).

#### CONCLUSION

Mr. G . should be allowed to present his arguments in this appeal or, in the alternative, to present facts supporting his arguments in an additional administrative hearing. To dismiss this case, as requested by the State, would be a denial of due process. In addition, the issues raised by Mr. G in Appellant's Brief have not

been refuted by the State. It is not impermissible to give reasonable accommodation to people with developmental disabilities as required by state statute.

Respectfully submitted at Anchorage, Alaska this  
6<sup>th</sup> day of September, 1988.

*Rebecca E. Graham*

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Rebecca E. Graham  
Attorney for E . J. G

understand that these penalties are in penalties imposed.

ature of individual, t, guardian, or other rized representative)

this section or as may be provided by tment, an individual must personally t fund dividends, including the certi- nder (b) of this section.

ication of residency of an unemanci- of age or of an incompetent individual al's parent, legal guardian, or other

permanent fund dividend on behalf of shall hold the dividend in trust for rust under this subsection shall be n accordance with AS 37.10.070.

individual may not maintain a claim - employee of the state based on the ardian, or authorized representative state managed or disposed of perma- behalf of the minor or incompetent

ed by a decision of the department ibility for a permanent fund dividend claim a permanent fund dividend on may appeal that decision to the supe- S 44.62.560. An appeal under this ved individual to a trial de novo. The ord of the administrative proceeding he scope of appeal is limited to mat- the administrative proceeding.

nt provisions of AS 43.23.035 apply rmanent fund dividend on behalf of m § 2 ch 159 SLA 1988; am § 4 ch

permanent fund dividends. The commis- sioner may require an individual to pro- vide proof of eligibility, and the commis- sioner may use other information avail- able from other state departments or agencies to determine the eligibility of an individual.

"(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must contain a statement of eligibility

and a certification of residency in substan- tially the following form:

I certify that

( ) I am a state resident on the date of this application and I have been a state resident for at least six months immediately preceding the date of this applica- tion, or

( ) (name), the individual on whose behalf I am applying, is a state resident and has been a state resident for at least six months immediately preceding the date of this application.

I understand that a false claim of resi- dency to obtain a permanent fund divi- dend for myself or for another is a crim- inal offense and that if convicted I will for- feit future permanent fund dividends and that I will lose or must repay all perma- nent fund dividends that have been cred- ited or paid to me, and any accrued inter- est in my annuity account. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized repre- sentative)

"(e) If a public agency claims a dividend on behalf of an individual under this sec- tion, the public agency shall elect 100 per- cent cash under AS 43.23.005(d) and hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

**Sec. 43.23.025. Amount of dividend.** (a) By October 1 of each year the commissioner shall give public notice of the value of each permanent fund dividend for that year. The public notice shall contain a statement disclosing the amount by which each individual dividend has been reduced in order to pay the costs of administering the pro- gram and the hold harmless provisions of AS 43.23.075. The commis- sioner shall also include the statement on the stub attached to each individual dividend check. The commissioner shall determine the value of a permanent fund dividend by

(1) determining the total amount available for dividend payments, which equals

(A) the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.045(b) during the current year;

(B) plus the unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend fund under AS 43.23.045(d);

(C) less the amount necessary to pay dividends from the dividend fund in the current year under AS 43.23.055(3);

"(f) A minor or an incompetent individ- ual may not maintain a claim against the state or an officer or employee of the state based either on the manner in which the parent, guardian, or authorized represen- tative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

"(i) The permanent fund dividend appli- cation form shall be prepared to allow an applicant, other than a person who is ex- empt under AS 47.45.015(b), to elect to receive the dividend either in cash or as an annuity credit."

**Cross references.** — For voluntary contributions to Alaska Winter Olympics account, see AS 05.35.100.

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, re- wrote the statement of eligibility and cer- tification of residency in subsection (b) to the extent that a detailed comparison is impracticable.

The 1989 amendment, effective Janu- ary 1, 1990, substituted "24 months" for "six months" in the first two paragraphs of the form in subsection (b).

**Editor's notes.** — Until January 1, 1990, the first two paragraphs in the form in subsection (b) refer to a six-month rather than 24-month residency period.

Item 4

(D) less the amount necessary to pay dividends from the dividend fund due to eligible applicants who, as determined by the department, filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;

(2) determining the number of individuals eligible to receive a dividend payment for the current year; and

(3) dividing the amount determined under (1) of this section by the amount determined under (2) of this section.

(b) For the purpose of calculating the amount of a permanent fund dividend under (a) of this section, an individual who is ineligible to receive a dividend under AS 43.23.005(d) is counted as an eligible individual whether or not the individual has applied for the dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983; am § 2 ch 43 SLA 1984; am § 2 ch 57 SLA 1987; am § 2 ch 54 SLA 1988)

*Effect of amendments.* — The 1984 amendment substituted "October" for "December" in the first sentence in the introductory paragraph.

The 1987 amendment, added the second and third sentences in the introductory language, in paragraph (1) inserted "the total amount available for dividend payments, which equals" following "determining," designated some of the existing language as subparagraph ( ) and added

subparagraphs (B)-(D), and in paragraph (3) substituted "under" for "in" in two places.

The 1988 amendment, effective May 26, 1988, added subsection (b).

*Editor's notes.* — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

NOTES TO DECISIONS

Stated in *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985).

**Sec. 43.23.035. Penalties and enforcement.** (a) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends paid and is not eligible for a future permanent fund dividend.

(b) If the commissioner determines that a permanent fund dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

(c) An individual who, in claiming a permanent fund dividend, or an individual who, in certifying another person's eligibility, wilfully misrepresents, exercises gross negligence, or recklessly disregards a

material to a civil five dividend may cost 102 SL

Revised ch. 99, SLA section, amendments are 1985 is r 1985). If section w criminal, an individual connection: a certifi: 43.23.015 reversed, the permanent fund together with individual eligible for dividend.

"(b) If that a case claimed by commission procedures or tion of tax

Sec. 4 lished a shall be the com

(b) No commissi income o ending or However Amerada District) Alaska p to the di pal of th

(c) [Re (d) Un pended a chapter l which th the amo

Item 5

STEVE COWPER, GOVERNOR

**DEPARTMENT OF REVENUE**

OFFICE OF THE COMMISSIONER

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300  
TELEFAX: (907) 465-2389

April 2, 1990

The Honorable Bill Hudson  
Alaska House of Representatives  
P.O. Box 5  
Court, Room 605  
Juneau, Alaska 99811

Dear Representative Hudson:

Your bill, HB 380 - "An Act relating to Permanent Fund Dividends for Incompetent Individuals ...", is scheduled for hearing in House State Affairs on April 3. Essentially this is a good piece of legislation. It seeks to address a fundamental inequity in the administration of the PFD program. With the recent adoption of 15 AAC 23.135(e), however, the Department believes this legislation to be unnecessary. Like yourself, the Department recently came to the conclusion that certain Alaskans, those loosely defined as "disabled" under 15 AAC 23.990(6), were unfairly being excluded from the program due to overly restrictive guidelines. Through no fault of their own-they were simply unable to complete the application-some were not completing or filing their application in time to meet the filing deadline. The recent adoption of 15 AAC 23.135(e) should adequately address this problem:

15 AAC 23.135(e) If the department does not have a timely filed application on file for an individual, that individual or an authorized representative may submit an application for a prior year dividend, if the individual was disabled as defined in 15 AAC 23.990(6) during the application period.

I appreciate your efforts (HB 380) in bringing both public and legislative attention to this issue. With the new regulation in place, the department will immediately undertake steps to rectify this very unfortunate situation.

Sincerely,

*Clifford Cook for*  
Hugh Malone  
Commissioner

HM:RW:sp

SG-75

cc: All Members of House State Affairs Committee

Register

1990

REVENUE

15 AAC 23.135

gible to receive a permanent fund dividend. (Eff. / / ,  
Register )

Authority: AS 43.23.015

AS 43.23.055

15 AAC 23.135. ELIGIBILITY FOR A PRIOR YEAR DIVIDEND FOR  
1990 AND SUBSEQUENT YEARS. (a) An individual who has reached  
majority, or who has become an emancipated minor, may apply to  
the department for a prior year dividend if

(1) the individual had not reached majority or become  
an emancipated minor ~~prior to~~ <sup>before</sup> July 1 of the dividend year for  
which the individual is applying;

(2) a complete permanent fund dividend application was  
not filed by an eligible sponsor on the individual's behalf, was  
not timely filed, or, solely as a result of competing applications  
being filed, ~~none~~ <sup>not</sup> was paid; and  
A

(3) the individual would have qualified as a resident, as described in AS 43.23.095(7).

(b) An individual who qualifies under (a) of this section must file an application within one year after the individual reaches majority or becomes an emancipated minor, whichever is earlier.

(c) Except as provided in (e) of this section, if the department does not have a timely filed application on file, in order to be eligible to receive a dividend, the applicant must submit, before July 1 of the year following the dividend year, a request to reapply and one of the following forms of evidence that an application was timely filed with the department:

(1) a mailing receipt;

(2) a delivery receipt; or

(3) a notarized affidavit in which the applicant or applicant's sponsor states, under penalty of unsworn falsification, that the application was timely filed, and

(A) an individual states, under penalty of unsworn falsification, that the individual witnessed the filing; or

(B) one of the individuals who signed the residency verification portion of the timely filed application states, under penalty of unsworn falsification, that the individual signed the residency verification before the application deadline.

(d) If an applicant files, under (c) of this section, a request to reapply along with the required supporting evidence by September 15 of the dividend year and is determined to be eligible, the department will pay the applicant from that year's dividend distribution. If an applicant files, under (c) of this section, a request to reapply along with supporting evidence after September 15 of the dividend year but before the July 1 immediately following the dividend year and is determined to be eligible, the department will pay the applicant from that year's dividend distribution if money is available; if money is not available, then the applicant will be paid from the subsequent year's dividend distribution.

(e) If the department does not have a timely filed application on file for an individual, that individual or an authorized representative may submit an application for a prior year dividend if the individual was disabled, as defined in 15 AAC 23.990(6), during the application period. (Eff. / / , Register )

Authority: AS 43.23.015

AS 43.23.055

15 AAC 23.145. APPLICATIONS GENERALLY FOR 1990 AND SUBSEQUENT YEARS. (a) An individual may apply for a permanent fund dividend after March 31 but before July 1 of the dividend year on a form provided by the department. An application postmarked during that period is considered timely filed.

(b) Except as provided in AS 43.23.015(d), 15 AAC 23.155, and 15 AAC 23.165, an individual applying for a <sup>permanent fund</sup> dividend ~~payment~~ must personally sign the certification of residency and eligibility contained on the application form.

15 AAC 23.990 ADMINISTRATIVE CODE SUPPLEMENT 15 AAC 23.990

15 AAC 23.990. DEFINITIONS. In this chapter, unless otherwise indicated,

- (1) "abode" means one's home or place of dwelling;
- (2) "adult" means an individual who has reached 18 years of age, which is the age of majority under AS 25.20.010, or who is under 18 years of age but because of marriage has reached the age of majority under AS 25.20.020;
- (3) "authorized representative" means an adult who has a sufficiently significant relationship with a child or another adult that the department is satisfied that the person is applying for the permanent fund dividend payment for the benefit of the child or the adult; "authorized representative" includes an official of a public agency or a private institution;
- (4) "child" means an individual who has not reached the age of majority under AS 25.20.010 or 25.20.020;
- (5) "department" means the Department of Revenue;
- (6) "disabled" means physically or mentally unable to complete and sign an application, due to a visual handicap, serious emotional disturbance, orthopedic or other health impairment, or due to a developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, or autism; "disabled" does not mean "incompetent";
- (7) "dividend year" means the calendar year in which the dividend is declared;
- (8) "emancipated minor" means an individual under the age of 18 years who has been declared emancipated by the superior court of this state under AS 09.55.590, or by a court of another jurisdiction under procedures granting the individual the equivalent status;
- (9) "individual" means a natural person;
- (10) "legal guardian" means a guardian or conservator appointed by the court under AS 13.26.035, 13.26.045, 13.26.095, 13.26.110, 13.26.112, 13.26.210, or similar provisions of law of this state or another jurisdiction;
- (11) "month" means a calendar month. (Eff. 4/1/89, Register 109)

Authority: AS 43.23.015  
AS 43.23.055  
AS 43.23.095



Item 6

Residential and Employment Alternatives in the Community for the Handicapped  
P. O. Box 34197 • Juneau, Alaska 99803  
Phone: (907) 789-7673

January 11, 1990

The Honorable Bill Hudson  
House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Representative Hudson:

On behalf of Residential and Employment Alternatives in the Community for the Handicapped (REACH, Inc.) we offer support to your legislative efforts toward allowing the Permanent Fund Dividend application process to be sensitive to the special needs of disabled Alaskans.

As an agency, this is an issue of concern. We have several individuals who did not receive dividends. Even though they are certainly eligible, they are incapable of filling out the forms on their own. The system fails to take this type of situation into account. These individuals are penalized as a result, leading to further dependence on others to complete the process on their behalf.

I believe the state owes Alaskans suffering disabilities the protection from the existing Permanent Fund Dividend application process. Many Alaskans are at the mercy of others to file on their behalf and this is the "risk" factor that should be evaluated for removal, if possible.

If I can be of further assistance or support to you regarding this issue, please feel free to call on me anytime.

With regards,

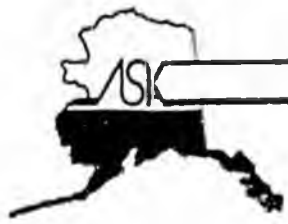
*Rod Moline*

Rod Moline  
Executive Director

RM/lc



Item 7



ADVOCACY SERVICES OF ALASKA

615 East 82nd, Suite 101  
Anchorage, AK 99518  
(907) 344-1002 TDD  
Toll Free 800-478-1234  
Fax (907) 349-1002

230 South Franklin  
Juneau, AK 99801  
(907) 586-1627 TDD  
Fax (907) 586-1066

250 Cushman, Suite 3H  
Fairbanks, AK 99701  
(907) 456-1070 TDD  
Fax (907) 456-1080

January 18, 1990

Representative Bill Hudson  
P.O. Box V  
Juneau, AK 99811

Attn: Landa

Re: Permanent fund dividend checks for people  
with disabilities

Dear Representative Hudson:

I spoke today with Rod Moline of REACH in Juneau about the issue of people with developmental disabilities who miss filing deadlines for requesting their permanent fund dividends. He called me because he was aware of a case I recently settled with Department of Revenue. He stated that your office is interested in introducing some legislation to deal with this problem.

I have enclosed a copy of the briefs in the court appeal that I brought on behalf of a man with mental retardation. Basically the facts and issues are set out in the brief of appellant. After this was filed, the court remanded the case back to the Department of Revenue for a hearing to get more facts.

We never had a hearing on any of the issues because the State settled with my client and gave him his 1986 Permanent Fund Dividend. Subsequently the Department also settled with a client of this agency who has a diagnosis of mental illness and had also not applied for a PFD.

I have removed the name of my client to protect his dignity although this case is a public record.

I would be happy to provide any more information about this case or anything else that might be helpful to bring about a statutory resolution to this. I do not think that the current policy of simply settling with those claimants who appeal will be fair to those who have no way of knowing that this is available.

Sincerely,

*Rebecca E. Graham*

Rebecca E. Graham  
Staff Attorney