

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

IN THE MATTER OF

S.B.

Case No. OAH 05-0041-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

S.B. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. B. was not eligible, and it denied the application initially and at the informal appeal level. Mr. B. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on April 4, 2005. Susan Lutz represented the PFD Division. Mr. B. did not appear or show cause for his failure to appear; this decision is therefore based on the record in accordance with 15 A A C 05.030(j). The administrative law judge affirms the division's decision.

**II. Facts**

The division has submitted a preprinted form from the Department of Corrections with a box checked to indicate that Mr. B. was incarcerated during all or part of 2003 as the result of a misdemeanor, and that he had been convicted of a felony or more than one prior misdemeanor. A notation on the bottom of the form reads, "12/12/03 - 12/15/03 Dis Ordly M ." After the hearing, the division presented copies of records from the court's database showing that Mr. B. was charged with disorderly conduct on December 13, 2003, and that he pled guilty and was convicted on December 15, 2003.

In his formal hearing request, Mr. B. wrote, "I was not incarcerated in 2003" and "I was in Walla Walla V.A. Hospital most or part of the questioned time frame." On his application, Mr. B. indicated that he was absent from Alaska from May 5, 2003 until September 27, 2003. He listed "medical" as the reason for the absence, and included the name and address of \*\*\*\*  
V.A. Medical Center.

### **III. Discussion**

At a formal hearing, the person requesting the hearing has the burden of proving that the division's actions were incorrect.<sup>1</sup> By stating that he was not incarcerated and providing evidence that he was out of state in the hospital, Mr. B. has presented some evidence to shift the burden of proof back to the division. Other evidence in the case, however, weighs more heavily towards the division's position. The evidence that I find to be most persuasively in the division's favor is not anything found in the file, but rather the lack of certain information in the file. The division has presented a statement from the Department of Corrections that suggests that Mr. B. was incarcerated from December 12 to December 15, 2003. The court database printout that the division has presented states that Mr. B. was charged with disorderly conduct in case number 1JU-03-1873 CR on December 13, 2003, and that he pled guilty December 15, 2003.

Either of the two items of evidence the division has produced could be challenged; if they did not reflect the truth, that fact could be shown. The key evidence that I rely on in affirming the division's decision is the absence of a response from Mr. B. to the division's documents. The Department of Corrections document alone does not provide much specific information, but when it is combined with the court documents that the administrative law judge asked the division to provide, the correlating dates are clearly seen. The result is a clear picture of why the division believes Mr. B. was incarcerated during 2003 as the result of a misdemeanor conviction. With the specific case number and charge now available, Mr. B. has the information he would need to produce evidence in his favor and discredit the division's position.

If Mr. B. could produce evidence from the court file showing that the case was dismissed, for example, or that he had been in the hospital in Walla Walla all through December 2003, the preponderance of the evidence might tip back in his favor. I find it likely that if Mr. B. could produce such evidence, he would have. The mere statement of the Division of Corrections that Mr. B. was incarcerated, and a simple printout from the court system, do not conclusively prove that Mr. B. was incarcerated. The key evidence is the lack of response when the division has provided a very clear and specific basis for its belief that the applicant was incarcerated during the qualifying year.

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

#### **IV. Conclusion**

Mr. B. was incarcerated during all or part of 2003 as the result of a misdemeanor conviction in this state after being previously convicted of a felony or more than one prior misdemeanor. The division was correctly following the law when it denied Mr. B.'s application for a 2004 dividend.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of S.B. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 28th day of September, 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 S.B. 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 28th day of September, 2005.

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

PFD Division  
9/28/05

By: DALE WHITNEY  
Administrative Law Judge