

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

IN THE MATTER OF

P.V.

Case No. OAH 05-0072-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

P.V. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. V. was not eligible, and it denied the application initially and at the informal appeal level. Mr. V. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

**II. Facts**

The division has asserted that Mr. V. was incarcerated at some time during 2003 because of a felony conviction. There has been almost no evidence in this case presented by either party. Mr. V. submitted is a written statement that reads in its entirety, "I still contend I did not serve any felony time." His informal conference request is blank. The division presented a one-page form that it received from the Department of Corrections. The form has a box checked next to a pre-printed paragraph that reads, "The Department of Corrections correctly identified this individual as being incarcerated at some time during 2003 as the result of a felony conviction [emphasis in original]." On a portion of the form title "Additional Information" is the following handwritten notation: PT Revoke Prob 7/21/03 - 12/9/03 from prev. felony DWI."

**III. Discussion**

A person is not eligible for a dividend, if at any time during the qualifying year, he was incarcerated as the result of a felony conviction in this state.<sup>1</sup> At a formal hearing, the person requesting the hearing has the burden of proving the division's action is incorrect.<sup>2</sup> While the burden is on Mr. V. to prove the division is incorrect, when the standard of proof is a preponderance of the evidence it would take only a slight amount of evidence to tip the scale in Mr. V.'s favor. In this case, Mr. V. has not presented any evidence beyond his statement.

<sup>1</sup> AS 43.23.005(d).

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

I find that Mr. V.'s statement that he did not serve any felony time inadequate to prove the division's decision is incorrect.

The notation from Department of Corrections suggests that Mr. V. was incarcerated because a petition had been filed to revoke his probation for a felony. From Mr. V.'s perspective, a probation revocation might not be the result of a felony, but rather the result of the conduct that resulted in the petition. But violating probation is not a separate crime for which a judge may sentence the defendant additional time to serve. The time that is served when probation is revoked is time to serve that the judge ordered when sentencing the defendant on the original felony. The judge suspends the time to see how the defendant does on probation, and if probation goes well the defendant does not have to serve that time. If the judge revokes probation, the time that the defendant then serves is the result of the original felony conviction, not the result of whatever event made the judge decide to revoke probation.

In this case, it appears that Mr. V. was incarcerated during the qualifying year as the result of an earlier conviction of felony-level driving while intoxicated. The division was correctly following the law when it made the decision to deny Mr. V.'s application for a 2004 PFD.

#### **IV. Conclusion**

Mr. V. has not met his burden of proving that the division was incorrect to deny his application for a 2004 dividend. The division's decision should be affirmed.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of P.V. for a 004 permanent fund dividend be AFFIRMED.

DATED this 29th 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 P.V. 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 29th day of September, 2005.

By: DALE WHITNEY  
Administrative Law Judge

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

PFD Division  
9/29/05