

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

IN THE MATTER OF

A.K.

Case No. OAH 05-0218-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

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

II. Facts

The division asserts that Ms. K. was incarcerated at some point during 2003 as the result of a misdemeanor, and that she has been convicted of at least two prior misdemeanors. The Department of Corrections verified that Ms. K. was incarcerated from April 21, 2003, until May 7, 2003. The division identified two criminal case numbers for which it asserts that Ms. K. was convicted of prior misdemeanors. The court system web page shows the following cases in which Ms. K. has been convicted of misdemeanors:

3DI-**-*****CR
3DI-**-*****CR
3DI-**-*****CR
3DI-**-*****CR (two counts)

III. Discussion

According to as 43.23.005(d), an individual is not eligible for a permanent fund dividend for a dividend year when during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a misdemeanor if the individual has been convicted of two or more prior misdemeanors. At a formal hearing, the person requesting the hearing has the burden of demonstrating that the division's actions were in error.¹

¹ 15 A A C 05.030(h).

In her formal appeal request, Ms. K. states that to the best of her knowledge one misdemeanor charge for violating conditions of probation had been dropped and that she has never been a felon. She also states that she has been a victim who got in trouble for seeking help. In a letter that she later submitted, Ms. K. asserts that not been convicted of two or more misdemeanors, and she states that another person has been caught using her identification.

Ms. K. has not denied that she was incarcerated for some period during 2003, the qualifying year for a 2004 dividend. Though she asserts she has not been convicted of two prior misdemeanors, she has not addressed the cases identified by the division and the court system. It is possible that these records are incorrect, but they state that a person with Ms. K.'s name and date of birth pleaded no contest to misdemeanor charges in each of the cases. The burden is on Ms. K. to prove there has been an error, perhaps by providing records from the Dillingham court or her public defender showing she was not convicted in the cases identified. I find that Ms. K. has not met this burden.

IV. Conclusion

Ms. K. was incarcerated during part of 2003 as the result of conviction of a misdemeanor in this state. She has been convicted of at least two prior misdemeanor charges. The division was correctly following the law when it made the decision to deny Ms. K.'s 2004 permanent fund dividend application.

V. Order

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

DATED this 25th day of August, 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 A.K. 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 25th day of August, 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
8/25/05