

After the PFD Division denied his application for a 2007 dividend and held to that position through an informal appeal, Mr. J. initiated this appeal. He checked the box to indicate a preference for a hearing by written correspondence only.⁸ By notice dated March 25, 2008, the Division and Mr. J. were given until April 25, 2008 to send any additional documents or correspondence for consideration in this appeal. The Division filed a position statement with no new exhibits. Mr. J. filed nothing. Because Mr. J. filed nothing, the Division has no further opportunity to submit evidence. Mr. J. would have until May 5, 2008 to respond to the Division's filing, if a response were necessary.

III. Discussion

The Alaska legislature has directed that “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 as defined in AS 11.81.900.”⁹ The qualifying year for a 2007 dividend was 2006.¹⁰ Mr. J. appears to have been convicted of two or more misdemeanors prior to that year. This appeal turns on whether he was incarcerated in 2006 “as a result of” an Alaska misdemeanor conviction.

Mr. J. had two incarcerations in 2006. The first was a noncriminal hold, and thus was plainly not connected with a misdemeanor conviction.

The second incarceration preceded Mr. J.'s October 25, 2006 conviction for drinking in public. Upon his conviction, the incarceration ended. He has not been sentenced for the conviction. Under these circumstances, one cannot say that the incarceration was “as a result of” the conviction. It was as a result of the arrest.¹¹

Because the Division has no further right to submit evidence or argument in this case, and because the record shows that an outcome adverse to the Division is required as a matter of law on the present record, it is unnecessary to wait for Mr. J. to submit additional material before entering this ruling.

⁸ Exhibit 7, p. 1 (Request for Formal Hearing).

⁹ AS 43.23.005(d).

¹⁰ AS 43.23.095(6).

¹¹ A closer question might be presented if Mr. J. had been sentenced and the sentence was to “time served,” that is, to an already-completed incarceration. This case does not present that situation.

IV. Conclusion

Though he was jailed on two occasions in 2006, Mr. J. was never incarcerated that year *as a result of* a conviction in Alaska. Accordingly, his incarcerations do not disqualify him from a 2007 PFD.

V. Order

IT IS HEREBY ORDERED

(1) that the decision of the Permanent Fund Dividend Division to deny the application of H. J. J., Jr. for a 2007 permanent fund dividend is REVERSED;

(2) that the application of H. J. J., Jr. for a 2007 permanent fund dividend be GRANTED.

DATED this 28th day of April, 2008.

By: Signed
Christopher Kennedy
Administrative Law Judge

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 Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of May, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]