

III. Discussion

AS 43.23.005(d) provides that an individual is ineligible for an Alaska Permanent Fund dividend if during the qualifying year, “the individual was incarcerated as a result of the conviction in this state of a...(B) misdemeanor if the individual has been convicted of...(ii) two or more prior misdemeanors as defined in AS 11.81.900.” AS 11.81.900 b)(3) defines a misdemeanor as a crime (“an offense for which a sentence of imprisonment is authorized”)⁶ “for which a sentence of imprisonment for a term of more than one year may not be imposed.”

Ms. N.’s appeal document asserts that one of her prior convictions was for “mischief” rather than for a misdemeanor and that “most of my charges were dismissed.”⁷

The Anchorage Municipal Code provides that a sentence of imprisonment of up to one year may be imposed for a violation of AMC 8.10.010(b)(1)⁸ or AMC 08.10.060,⁹ and of up to six months for a violation of AMC 08.30.120(a)(3).¹⁰ Under current law, therefore, all of Ms. N.’s convictions are for misdemeanors. While the division has not submitted copies of the code as it was in effect when Ms. N. was convicted, there is evidence in the record that the 1999 conviction was a misdemeanor at the time,¹¹ and online court records support the Department of Correction’s characterization of the 2002 conviction as a misdemeanor.¹² Thus, Ms. N. has not shown that the division’s determination that she had two prior misdemeanor convictions was erroneous.

That Ms. N. has not shown that either of her prior convictions was not a misdemeanor does not entirely resolve the case, however. The facts of the case raise a legal issue: whether Ms. N.’s 2007 incarceration was a “result” of the 2007 conviction. Ms. N. was originally incarcerated as a result of her arrest, not as a result of a conviction. She remained incarcerated through the time she was convicted on May 23; she was immediately thereafter sentenced to time served and released.¹³ Because Ms. N. was convicted, the time served prior to conviction is

⁶ AS 11.81.900(b)(11).

⁷ Exhibit 5, page 2.

⁸ AMC 08.10.010(E).

⁹ AMC 08.10.060(A).

¹⁰ AMC 08.30.120(C).

¹¹ See Exhibit 3, page 7 (imposing \$50 fee for misdemeanor), page 4 (offense identified as misdemeanor).

¹² See note 2, *supra*.

¹³ See Exhibit 4, page 9 (“RLS-TIME SERVED”). The online court records indicate that a sentence of 210 days with 195 days was imposed. Ms. N. actually served 11 days, from May 13-23. The four day discrepancy between the time imposed and the time served is unexplained.

deemed for purposes of AS 43.23.005(d) to have been served beginning on the date of the conviction.¹⁴ Her incarceration may therefore reasonably be characterized for purposes of AS 43.23.005(d) as a “result” of the conviction even though it was occasioned by her arrest and, but for a few moments on May 23 between her conviction and her release, occurred before the conviction.

IV. Conclusion

The division’s denial of the application of L. A. N. for a 2008 Alaska Permanent Fund dividend is AFFIRMED.

DATED April 6, 2009.

Signed

Andrew M. Hemenway
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 11th day of May, 2009.

By: Signed

Signature
Andrew M. Hemenway

Name
Administrative Law Judge

Title

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

¹⁴ See generally, State v. Anthony, 810 P.2d 155, 162 (Alaska 1991); In Re A.P., OAH No. 07-0343-PFD (Department of Revenue, November 28, 2007).