

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

IN THE MATTER OF)
)
 W. R.)
) Case No. OAH 08-0685-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

W. R. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. R. was not eligible, and it denied the application initially and at the informal appeal level. Mr. R. requested a formal hearing. The hearing was held on January 28, 2009. Mr. R. participated in the formal hearing. PFD Specialist Kimberly Colby filed a position statement and represented the division at the hearing. The record closed at the end of the hearing.

Because Mr. R. was incarcerated during part of the qualifying year and had been convicted of two prior misdemeanors, the division was correctly applying the law when it denied Mr. R.’s application for a 2008 dividend. Because he is not eligible for a 2008 PFD, Mr. R. is also ineligible for the Alaska resource rebate.

II. Facts

The Department of Corrections (DOC) asserts that Mr. R. was incarcerated in 2007 for twenty four days, from December 29, 2006 to January 24, 2007, for a misdemeanor conviction in criminal case number 3AN-S06-10329CR.¹

According to DOC’s printed records, Mr. R. also had more than two prior misdemeanor convictions in other cases since 1996.²

Mr. R. admitted at the hearing that the division’s findings are correct.³ Mr. R. explained that he was appealing because he understood that someone who did not get a 2008 PFD did get an Alaska resource rebate.⁴

¹ Exhibit 6, page 7.

² Exhibit 6, pages 1-8.

³ Recording of Hearing-Testimony of Mr. R.

⁴ Recording of Hearing-Testimony of Mr. R.

III. Discussion

For a 2008 dividend, the qualifying year was 2007. If a person was incarcerated at any time in the qualifying year for conviction of a misdemeanor, and the person has previously been convicted of two or more misdemeanors at any time since 1996, that person will not be eligible for a 2008 dividend.⁵ Mr. R. admits that he was incarcerated for part of 2007. There is no dispute that Mr. R. has previously been convicted of at least two misdemeanors between 1996 and 2007. Because he served some time in 2007, and had been convicted of at least two misdemeanors, the division is correct that Mr. R. is not eligible for a dividend in 2008.

The law that created the Alaska resource rebate simply directed the Commissioner of Revenue to add \$1200 to the amount of the 2008 PFD.⁶ An individual who is not eligible for the 2008 PFD is therefore not eligible for \$1200 the portion of the 2008 PFD that was added for the Alaska resource rebate. There is one narrow exception for certain Alaskans who were eligible for certain veterans' benefits but did not apply for a 2008 PFD, but even these individuals must have been eligible for a 2008 PFD had they timely applied.⁷ Mr. R. stated that he was not receiving veterans' benefits.⁸ Mr. R. did apply for a 2008 PFD. He also is not eligible.

IV. Conclusion

The division was correct in finding that Mr. R. was incarcerated during 2007 as the result of a misdemeanor conviction, and that before 2007 he had been convicted of two or more misdemeanors. Mr. R. is therefore not eligible for a 2008 PFD, including the portion of the 2008 PFD that was added for the Alaska resource rebate. Mr. R. is not eligible for a separate Alaska resource rebate.

The division's decision to deny the application of W. R. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 4th day of February, 2009.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

⁵ AS 43.23.005(d)(2).

⁶ §5(a) CH 2 4SSLA 2008

⁷ §5(b) CH 2 4SSLA 2008

⁸ Recording of Hearing-Testimony of Mr. R..
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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 4th day of March, 2009.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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