

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

IN THE MATTER OF)	
)	
S. G.)	
)	OAH No. 08-0700-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-053-5833

DECISION

I. Introduction

S. G. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. G. was not eligible, and it denied the application initially and at the informal appeal level, because she was incarcerated as a result of a conviction during the qualifying year. Following the unsuccessful informal appeal, Ms. G. requested a formal hearing. A telephonic hearing was held February 3, 2009. The division’s denial of Ms. G.’s application is affirmed because she was incarcerated during the qualifying year as a result of a misdemeanor conviction after being convicted of two or more prior misdemeanors.

II. Facts

Ms. G. testified that she was convicted of a misdemeanor offense on October 23, 2007, for which she was incarcerated. She also testified that she was convicted of two prior misdemeanor convictions: one in 2004 and one in 1998.¹

III. Discussion

The qualifying year for a 2008 PFD was 2007.² It is undisputed that Ms. G. was convicted prior to 2007 of two or more misdemeanors committed since 1997. It is undisputed that she was incarcerated in 2007 as a result of an October 23, 2007, misdemeanor conviction. At hearing, Ms. G. acknowledged that she was ineligible for a 2008 PFD under AS 43.23.005(d).³ However, she questioned whether her ineligibility for a 2008 PFD included the portion of the dividend designated as her “Alaska resource rebate.”

¹ Exhibit 6 at 2, 4.

² AS 43.23.095(6).

³ AS 43.23.005(d) provides 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 ... (ii) two or more prior misdemeanors as defined in AS 11.81.900.” The statute counts prior convictions for misdemeanors committed on or after January 1, 1997. Sec. 6 ch. 46 SLA 1996 (quoted in editor’s note to AS 4.23.005).

Through legislation passed in 2008, Alaskans eligible for the 2008 PFD were given \$1200 in addition to the dividend amount calculated in the usual fashion.⁴ In pertinent part, the legislation states “[t]o provide residents of the state with an Alaska resource rebate, *the amount of the 2008 permanent fund dividend shall be increased.*”⁵ The plain language of the law shows that the \$1200 resource rebate increased the amount of the PFD. Though the purpose of adding this fixed amount to the calculated dividend amount was special—i.e., to provide residents extra dividend dollars in times of high energy costs—the law does not separate the \$1200 from the rest of the PFD.

IV. Conclusion

Ms. G.’s incarceration as a result of a misdemeanor conviction in 2007 disqualifies her from a 2008 PFD.

V. Order

The decision of the Permanent Fund Dividend Division to deny the application of S. G. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 4th day of February, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

⁴ See 2008 Sess. Law of Alaska, Fourth Special Session, ch. 2, § 5.

⁵ *Id.* at ¶ 5(a) (emphasis added).

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
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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