

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

IN THE MATTER OF	)	
	)	
E. P. D.	)	
	)	OAH No. 08-0705-PFD
<u>2008 Permanent Fund Dividend</u>	)	Agency No. 2008-060-1877

**DECISION**

**I. Introduction**

E. P. D.’ application for a 2008 permanent fund dividend (PFD) was denied because the Permanent Fund Dividend Division determined that Mr. D. had been incarcerated during the qualifying year under circumstances that would render him ineligible. Following an unsuccessful informal appeal, Mr. D. requested a formal hearing, which was held on March 24, 2009.<sup>1</sup> Mr. D. participated in person. PFD Specialist Peter Scott represented the division. The division’s denial of Mr. D.’ application is affirmed because he did have a disqualifying incarceration during the qualifying year for the 2008 PFD.

**II. Facts**

The facts are undisputed. Mr. D. was arrested on September 5, 2007. On September 6, 2007 he plead no contest to the charge of Driving Under the Influence in case number, 3XX-SXX-0XXXX. Mr. D. was sentenced to 240 days in jail with 220 days suspended. He was to report to the Cordova Center on November 1, 2007. He did not appear as ordered and a bench warrant was issued. On January 8, 2008, he was arrested and remanded into custody. At the time of his 2007 conviction, Mr. D. had been convicted of several prior criminal offenses including:<sup>2</sup>

<b>Case No.</b>	<b>Charge</b>	<b>Conviction Date</b>
3XX-SXX-0XXXX CR	Drive w/License Canc/Susp/Revoked	November 14, 2002
3XX-SXX-0XXXXCR	Third Degree Theft	November 14, 2002
3XX-SXX-0XXXXCR	Attempted Tampering w/ Physical Evidence	January 27, 2004

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<sup>1</sup> The hearing was originally held February 18, 2009. At Mr. D.’ request a supplemental hearing was held March 24, 2009.

### III. Discussion

AS 43.23.005(d)(2) 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 . . . (B) misdemeanor if the individual has been convicted of (i) a prior felony as defined in AS 11.81.900; or (ii) two or more prior misdemeanors as defined in AS 11.81.900.” The statute counts prior convictions for criminal offenses committed on or after January 1, 1997.<sup>3</sup>

Mr. D. does not challenge the division’s assertion that he has been convicted of two or more prior misdemeanors for crimes committed after January 1, 1997. Nor does he deny that he was convicted of a misdemeanor offense on September 6, 2007. Rather, Mr. D. argues that the division’s denial is in error because he was incarcerated in 2007 as the result of an arrest, not a conviction.

The qualifying year for a 2008 dividend was 2007.<sup>4</sup> By statute a “defendant shall receive credit for time spent in custody pending trial, sentencing or appeal if the detention was in connection with the offense for which sentence was imposed.”<sup>5</sup> Mr. D. was sentenced on September 6, 2007. “[T]he incarceration is deemed to have commenced on the date of sentencing and therefore, will be deemed to have been served ‘as a result of the conviction.’”<sup>6</sup> Therefore, Mr. D. received credit for time served on September 5 and 6, 2007 in 2007 as the result of a 2007 conviction. Mr. D.’ 2007 jail time was a disqualifying incarceration during the qualifying year for the 2008 PFD.

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<sup>2</sup> Department of Corrections OTIS Web Search Results, Exhibit 5.

<sup>3</sup> Sec. 6 ch. 46 SLA 1996 (quoted in editor’s note to AS 4.23.005).

<sup>4</sup> AS 43.23.095(6).

<sup>5</sup> AS 12.55.025(c); *State v. Anthony*, 810 P.2d 155, 161 (Alaska 1991)

<sup>6</sup> *State v. Anthony*, 810 P.2d 155, 161 (Alaska 1991).

**IV. Conclusion**

Mr. D.’ incarceration as a result of a misdemeanor conviction in 2007 disqualifies him from a 2008 PFD. Therefore, the decision of the Permanent Fund Dividend Division to deny the application of E. P. D. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 26<sup>th</sup> day of March, 2009.

By: Signed  
Rebecca L. Pauli  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 24<sup>th</sup> day of April, 2009.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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