

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

IN THE MATTER OF)
)
 S. W.)
) Case No. OAH 09-0009-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

S. W. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. W. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. W.’s request, a formal hearing was held on February 24, 2009. Ms. W. appeared by telephone, as did PFD Specialist Peter Scott. Because Ms. W. was incarcerated during part of the qualifying year and had been previously convicted of at least two misdemeanors, she is not eligible for a 2008 dividend.

II. Facts

Ms. W. was incarcerated from December 30, 2006, until January 26, 2007, as the result of conviction of a misdemeanor. Ms. W. had previously been convicted of at least two other misdemeanors since 1996. These facts are not in dispute.

III. Discussion

The state law that governs this case is Alaska Statute 43.23.005(d), which reads in part, 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.

Ms. W. was incarcerated for some time during January of 2007. Before that, she was convicted of at least two misdemeanors since 1996.

Ms. W. argues that the statutory scheme for PFD eligibility is unfair, as AS 43.23.005(d) makes a person ineligible based on events that occurred before the qualifying year. Ms. W. argues that labeling the qualifying year as such when eligibility hinges on even earlier events is misleading.

Ms. W. may wish to address her concerns to her representatives in the state legislature. As the law is currently written, Ms. W. does not qualify for a 2008 dividend.

IV. Conclusion

Ms. W. is not eligible for a 2008 dividend because she was incarcerated for part of the qualifying year and had previously been convicted of at least two misdemeanors. The decision of the Permanent Fund Dividend Division to deny the application of S. W. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 25th day of February, 2009.

By: Signed
DALE WHITNEY
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 26th day of March, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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