

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

IN THE MATTER OF)
)
 R. M.)
) Case No. OAH 09-0032-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

R. M. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. M. was not eligible, and it denied the application initially and at the informal appeal level. Ms. M. requested a formal hearing by written correspondence only. Review of the entire record and due deliberation support the conclusion that the division was correctly applying the law when it made the decision to deny Ms. M.’s application.

II. Facts

Relying on information it received from the Department of Corrections, the division concluded that Ms. M. had been incarcerated from May 24, 2007 until May 31, 2007. According to the Department of Corrections, Ms. M. was convicted on March 29, 2006, for a misdemeanor in case number 3AN-06-XXXX CR, and that after a petition to revoke probation was filed she was ordered on May 25, 2007, to serve ten days that had previously been suspended.¹ The Department of Corrections also listed two misdemeanors that Ms. M. had been convicted of, one in 2005 and one in 2003.

In her formal hearing request, Ms. M. writes, “I have had more than one misdemeanor. My PFD was not taken before now, misdemeanors are from ’06, ’04, ’04, ’03, ’93, felony from ’94.” Ms. M. went on to write, “I believe I am eligible for ’08 PFD because of the dates above for misdemeanors. You guys should have took my PFD last year or the year before, not this year. I believe your decision is unfair.” Ms. M. does not appear to dispute that she had been incarcerated from May 24, 2007 until May 31, 2007, because of the suspended time that was imposed in 2007 for the 2006 misdemeanor.

¹ Exhibit 4, page 5.

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.

Some confusion may have arisen in this case because it is true that Ms. M. was not convicted of a new offense during 2007. She was ordered to serve time that had previously been suspended when she was convicted in 2006. However, although the time was ordered to be served after a probation revocation petition, the ten days ordered to be served in 2007 were the result of a misdemeanor conviction. While she was not convicted of anything during 2007, Ms. M. was “incarcerated as a result of the conviction in this state of a...misdemeanor” during 2007, the qualifying year for a 2008 dividend. There is no dispute that Ms. M. has previously been convicted of at least two misdemeanors.

Ms. M. argues that the division should have denied her dividend application for 2007 or 2006, but not her 2008 dividend. While it is true that Ms. M. was charged and convicted of a misdemeanor in 2006, it does not appear that she was incarcerated for that offense until 2007, the qualifying year for 2008 dividends. It is incarceration during the qualifying year, not conviction, which makes a person ineligible for a dividend the following year. Because she was apparently not incarcerated in 2006, Ms. M. would have been eligible for a 2007 dividend; because she was incarcerated at some time in 2007, she is not eligible a 2008 dividend.

IV. Conclusion

Ms. M. was incarcerated for part of 2007 as the result of conviction of a misdemeanor, and she has previously been convicted of at least two misdemeanors. The division was correctly applying the law when it made the decision to deny Ms. M.’s application for a 2008 dividend. The decision of the Permanent Fund Dividend Division to deny the application of R. M. for a 2008 permanent fund dividend is **AFFIRMED**.

DATED this 10th day of March, 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 8th day of April, 2009.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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