

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

IN THE MATTER OF)	
)	
E. A.)	
)	OAH No. 09-0062-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-036-3744

DECISION

I. Introduction

E. A.'s application for a 2008 permanent fund dividend (PFD) was denied because the Permanent Fund Dividend Division determined that Mr. A. had been incarcerated during the qualifying year under circumstances that would render him ineligible. Following an unsuccessful informal appeal, Mr. A. requested a formal hearing by correspondence.

By notice dated February 6, 2009, Mr. A. was given until March 6, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both parties then had until March 16, 2009, to respond to any documents received from the other. The division filed a position statement and hearing exhibits. Mr. A. did not respond to the division's position statement or add to the record on appeal. The division's denial of Mr. A.'s application is affirmed because he did have a disqualifying incarceration during the qualifying year for the 2008 PFD.

II. Facts

Mr. A. does not dispute that he was incarcerated during all of 2007 as the result of a felony conviction, 3XX-05-0XXXXCR.¹ Rather, he asserts that he had ineffective assistance of counsel and has had his constitutional right to an appeal violated.²

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 (A) felony. . . ." The statute counts convictions for criminal offenses committed on or after January 1, 1997.³

¹ Exhibit 5.

² Exhibit 5.

³ Sec. 6 ch. 46 SLA 1996 (quoted in editor's note to AS 4.23.005).

Mr. A. does not challenge the division's assertion that he has been incarcerated for all of 2007 as the result of a felony conviction for a criminal offense committed after January 1, 1997. The qualifying year for a 2008 dividend was 2007.⁴ Therefore, under AS 43.23.005(d)(2)(A), Mr. A. was incarcerated.

Mr. A. has raised certain concerns and arguments that are beyond the jurisdiction of this tribunal. A Department of Revenue regulation, 15 AAC 23.183, establishes a procedure for late payment of dividends to people whose convictions are overturned on appeal. Subsection (b) of that regulation provides that an individual who was "correctly identified as incarcerated," and thereby denied a dividend, may file a special, delayed appeal of the denial "within 60 days of the reversal or vacating of the disqualifying convictions for which the individual was incarcerated." Accordingly, if a court appeal is successful and Mr. A.'s conviction is overturned, he should promptly file a new appeal regarding his 2008 PFD. The result of this appeal will not bar him from doing so.

IV. Conclusion

Mr. A.'s incarceration in 2007 as a result of a felony conviction disqualifies him from a 2008 PFD. The decision of the Permanent Fund Dividend Division to deny the application of E. A. for a 2008 permanent fund dividend is AFFIRMED without prejudice to Mr. A.'s right to renew his appeal under 15 AAC 23.183(b) in the event that the conviction(s) underlying his 2007 incarceration are vacated or reversed.

DATED this 24th day of March, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

⁴ AS 43.23.095(6).

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 20th 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.]