

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

IN THE MATTER OF)
)
 K. M.)
) OAH No. 09-0093-PFD
) Agency No. 2008-003-3203
2008 Permanent Fund Dividend)

DECISION

I. Introduction

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

II. Facts

The facts are undisputed. On November 16, 2006, Mr. M. was charged with operating a vehicle without proof of insurance and had his truck confiscated. A court date was set for December 20, 2006. Mr. M. failed to appear because he believed that the matter was resolved because he had to show proof of insurance when he retrieved his truck. Therefore he thought that the record would reflect he had insurance so there was no reason to appear in court. Mr. M. was mistaken. When he failed to appear a bench warrant was issued for his arrest.

On April 23, 2007, Mr. M. was taken into custody on the warrant. He was held in custody until May 1, 2007, when he entered a plea of no contest to the misdemeanor offense of operating a vehicle without proof of insurance. Based on his plea, the court found him guilty and convicted him of the offense. In addition to the imposition of fines, the court sentenced Mr. M. to 90 days in jail with 80 days suspended. He received credit for the time served from April 23, 2007 to May 1, 2007. At the time of his 2007 conviction, Mr. M. had been convicted of two prior misdemeanor criminal offenses:

Case No.	Charge	Conviction Date
3XX-S99-0XXXXCR	Fourth Degree Assault	September 22, 1999
3XX-S00-0XXXXCR	Fourth Degree Assault	September 25, 2000

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, 1997.¹

Mr. M. 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 incarcerated as the result of a misdemeanor conviction from April 23, 2007, through May 1, 2007. Rather, Mr. M. argues that he should have never been charged with driving without proof of insurance because he had insurance.

The qualifying year for a 2008 dividend was 2007.² Mr. M. was incarcerated in 2007 as the result of a misdemeanor conviction after having been convicted of two prior convictions. This tribunal has no jurisdiction to address Mr. M.’s assertion that the charge forming the basis of his 2007 conviction was unfounded. Therefore, for purposes of PFD eligibility, Mr. M.’s 2007 incarceration makes him ineligible for a 2008 PFD.

IV. Conclusion

Mr. M.’s incarceration in 2007 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 K. L. M. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 26th day of March, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹ Sec. 6 ch. 46 SLA 1996 (quoted in editor’s note to AS 4.23.005).

² 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 24th 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.]