

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

IN THE MATTER OF	)	
	)	
E. A. S.	)	
	)	OAH No. 09-0254-PFD
<u>2007 Permanent Fund Dividend</u>	)	Agency No. 2007-034-3260

**DECISION**

**I. Introduction**

E. A. S. timely applied for a 2007 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that Mr. S. was not eligible, and it denied the application initially, on the basis of incarceration for a felony conviction during the qualifying year. Mr. S. successfully appealed noting he had not been convicted of a felony in 2006 and the matter was remanded for further review. After additional review, again the division determined that Mr. S. failed to meet the eligibility requirements for a 2007 PFD because of an incarceration for a misdemeanor conviction during the qualifying year. Following the unsuccessful informal appeal, Mr. S. requested a formal hearing by correspondence. The division's denial of S.'s application is reversed because he was not incarcerated during all or part of the qualifying year as a result of a misdemeanor conviction after being convicted of two or more prior misdemeanors.

**II. Facts**

On December 22, 2005, Mr. S. received a citation setting a mandatory court appearance for January 12, 2006.<sup>1</sup> The citation alleged that he violated AS 28.35.060, Duty of Operator to Give Information and Render Assistance. This matter was assigned the court case number JU-05-0000CR. Mr. S. failed to appear and a bench warrant issued.<sup>2</sup> His failure to appear also added a second count to the citation alleging a violation of AS 12.25.230, Failure to Obey a Citation, which is a misdemeanor offense.<sup>3</sup> Mr. S. was arrested and taken into custody on February 2, 2006. Bail was posted and he was released that same day.<sup>4</sup>

A hearing was held April 20, 2006. The first count alleging violation of AS 28.35.060, Duty of Operator to Give Information, was dismissed.<sup>5</sup> As to the second count, Mr. S. pled guilty to

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<sup>1</sup> Exhibit 10 at 9.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.* at 17.

<sup>5</sup> *Id.* at 1.

violating AS 12.25.230, Failure to Obey Citation.<sup>6</sup> He was sentenced on April 20, 2006 to 60 days with 60 days suspended.<sup>7</sup> This was Mr. S.'s third misdemeanor conviction. His first occurred in March, 2001<sup>8</sup> and his second conviction was in August, 2002.<sup>9</sup>

### III. Discussion

This case is governed by AS 43.23.005(d), which states:

Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

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(1) 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; or

(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 .

For purposes of Mr. S.'s appeal, the operative words are "as the result of the conviction." It is undisputed that Mr. S. was incarcerated for a portion of February 2, 2006. However, he was incarcerated as the result of his *arrest*, not his *conviction*. The court sentenced Mr. S. to 60 days with all time suspended. Had the court sentenced Mr. S. to 60 days with 59 suspended and given Mr. S. credit for time served, then he would have been incarcerated as the result of the conviction and the division's conclusion that Mr. S. was not eligible for a 2007 PFD would have been correct. In the present case, however, the conviction resulted in no incarceration.

### IV. Conclusion

Mr. S. was not incarcerated for at least one day as the result of a misdemeanor conviction during the qualifying year. Upon adoption of this decision as the final administrative determination

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 2, 3.

<sup>8</sup> 1JU-00-00000CR, Exhibit 11 at 1.

<sup>9</sup> 1JU-02-00000CR, Exhibit 11 at 2.

in this matter, the decision of the Permanent Fund Dividend Division to deny the application of E. A. S. for a 2007 permanent fund dividend should be REVERSED.

DATED this 30<sup>th</sup> day of June, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27<sup>th</sup> day of July, 2009.

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

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