

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

IN THE MATTER OF)
)
 J. K.)
) Case No. OAH 09-0684-PFD
 2009 Permanent Fund Dividend)

DECISION

I. Introduction

J. K. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. K. was not eligible, and it denied the application initially and at the informal appeal level. Mr. K. requested a formal hearing by written correspondence.

Review of the entire written record shows that Mr. K. is not eligible for a 2009 dividend.

II. Facts

Mr. K. applied for his first dividend in 2009. Mr. K. was incarcerated during all or part of 2008 as the result of a felony conviction. In a letter accompanying his application, Mr. K. stated that he moved to Alaska in 2004, and he wrote in part,

I was under the impression that I had to be an Alaska resident for at least two years before filing for my PFD, and I was uncertain if 2004 counted since I came after the filing time period and was not in Alaska that entire year. So I did not file in 2005 or 2006. I was incarcerated in June of 2006 and was not allowed to file during my pre-trial incarceration (the facility refused to give me the PFD forms). So I was prevented from filing in 2007 and 2008, and would like to file for those years if possible, please.

In a letter he sent to the division on January 4, 2010, Mr. K. stated that he agreed with the division that he was not eligible for a 2009 dividend because he had been incarcerated in 2008. Mr. K. stated that his case is on appeal and he expects to prevail; the division agrees that if Mr. K. does prevail on appeal, he will have sixty days from the day the conviction is reversed to show that there are no other disqualifying convictions, and that he can then establish his eligibility for a 2009 dividend.

Another reason Mr. K. is applying is that he has been ordered by the Court of Appeals to apply for a dividend every year he is eligible until he has paid off a judgment for the cost of his court-appointed attorney.

III. Discussion

The only application at issue in this case is Mr. K.'s application for a 2009 dividend. Under AS 43.23.005(d), a person is not eligible for a dividend if at any time during the qualifying year the person was incarcerated as the result of a felony conviction. The parties agree that Mr. K. is not eligible for a 2009 dividend for this reason.

Although Mr. K. inquired about applying for prior year dividends, the letter he wrote does not constitute applications for those years. If Mr. K. wishes to apply for prior year dividends, he should obtain the correct application forms and submit them. However, one of the requirements for dividend eligibility is that the individual apply during the application period.¹ While there are certain exceptions to requirement of timely filing for minors in some cases and for certain military personnel, it does not apply that any of these exceptions would apply to Mr. K.²

IV. Conclusion

Mr. K. was incarcerated during 2008, the qualifying year for a 2009 permanent fund dividend, as the result of a felony conviction. The division was correctly applying the law when it made the decision to deny the application. The division's decision to deny Mr. K.'s application for a 2009 permanent fund dividend is affirmed.

DATED this 20th day of January, 2010.

By: Signed
DALE WHITNEY
Administrative Law Judge

¹ AS 43.23.005(a)(1); AS 43.23.011(a).

² AS 43.23.011(b)-(c); 15 AAC 23.133.
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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 18th day of February, 2010.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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