

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

IN THE MATTER OF )  
 )  
 D. T. )  
 ) Case No. OAH 09-0686-PFD  
 )  
2009 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

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

Because he was incarcerated during 2008 as the result of a felony conviction, Mr. T. is not eligible for a 2009 permanent fund dividend.

**II. Facts**

The Department of Corrections identified Mr. T. as having been incarcerated during at least part of 2008 as the result of a felony conviction. Mr. T. does not appear to dispute that he was incarcerated during at least part of 2008 and that his incarceration was the result of a felony conviction.

**III. Discussion**

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. Mr. T. submitted extensive briefing about the legitimacy and constitutionality of a different law, AS 43.23.021. This law allows the division to withhold payment of a dividend to persons who are required to register as sex offenders if they have failed to register until the person is in compliance with the registration requirements. If the person does not comply with the registration requirements within one year, the division may not pay the dividend.

The division did not delay payment of Mr. T.’s dividend for noncompliance with sex offender registration requirements. The division denied the application because Mr. T. was incarcerated during the qualifying year as the result of a felony conviction, and is therefore ineligible for a dividend under AS 43.23.005(d). The division’s action in this case has nothing to do with the legislature’s adoption of AS 43.23.021 effective January 1, 2009. It is therefore

unnecessary, and in fact would be improper, to consider Mr. T.'s challenge to AS 43.23.021. That law is not at issue in this case.

Mr. T. also argues that

the previous finding by the Alaska Supreme Court that AS 43.23.005(d) was "a valid regulatory purpose" has all changed with the passage of Senate Bill 265 [A.S. 43.23.021(a)-(b)] as a PENALTY, for past conduct should a sex offender or child kidnapper fail to register as required under "AS 12.63" and therefore punishment "for their past conduct...[THAT]...does violate the ex post facto clause" of the Alaska Constitution, Article I, § 15. (bracketed material in original)

Again, the legislature's adoption of AS 43.23.021 has no effect on this case. The language and meaning of AS 43.23.005(d) have not changed during any of the times relevant to this case.

#### **IV. Conclusion**

Mr. T. was incarcerated during part of the qualifying year as the result of a felony conviction. He is therefore ineligible for a 2009 permanent fund dividend.

DATED this 12<sup>th</sup> day of February, 2010.

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 11<sup>th</sup> day of March, 2010.

By: Signed \_\_\_\_\_  
Signature  
Dale Whitney \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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