

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

IN THE MATTER OF)
)
 M. A.)
) Case No. OAH 09-0687-PFD
)
2009 Permanent Fund Dividend)

DECISION

I. Introduction

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

Review of the entire record shows that Mr. A. is not eligible for a 2009 dividend because he was incarcerated during the qualifying year as the result of a felony conviction. Mr. A. is challenging whether he was properly incarcerated during the qualifying year. Should the courts declare that Mr. A. was not properly incarcerated and credited for time served in 2008, Mr. A. may reapply for his 2009 dividend.

II. Facts

Mr. A. was convicted of a felony in 1990. Following alleged parole or probation violations, Mr. A. was incarcerated during at least part of 2008 with time credited against the sentence in the original case. Mr. A. has challenged the calculation of his sentence and the propriety of his 2008 incarceration in the courts. It does not appear that, as of this time, the courts have found Mr. A.’s 2008 incarceration to have been improper or illegal, but the matter may not yet be resolved.

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. A. was incarcerated following a parole or probation revocation, but the time he was serving was imposed as part of the sentence in the 1990 felony conviction. Thus, the incarceration was the result of the felony conviction. Mr. A. has challenged the propriety of his incarceration by various means in the superior court and in the federal court system. Mr. A. alleges that the Department of Corrections has acted improperly in his case. Parts of these challenges involve constitutional issues. Mr. A. asserts that he should not have been incarcerated in 2008 and that he was wrongly held.

The applicable statute, AS 43.23.005(d), directs the division not to grant a PFD to a person who was incarcerated during the qualifying year as the result of a felony conviction. The division has correctly followed the rule that applies to it. The division lacks the authority and expertise to second-guess the courts as to whether a criminal conviction was correct, whether a sentence was legal, or whether the court system or a penal institution has violated a defendant's constitutional rights. These are matters properly decided by the courts.

Should a court declare that Mr. A.'s incarceration during 2008 was the result of an erroneous or illegal act on the part of the Department of Corrections, or that he was incarcerated for any other reason than as the result of a felony conviction, Mr. A. may again appeal the denial of his dividend under 15 AAC 23.183. Until that time, the division must follow the law that applies to it and not interfere with matters that are properly pending before the courts.

IV. Conclusion

The division was correctly following the law when it made the decision to deny Mr. A.'s application for a 2009 permanent fund dividend. If a court determines that Mr. A.'s incarceration during 2008 was not the proper result of his felony conviction, Mr. A. should again appeal the denial of his 2009 dividend within sixty days of the court's decision under 15 AAC 23.183.

DATED this 24th 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 28th day of March, 2010.

By: Signed
Signature
Virginia Blaisdell
Name
Director, Administrative Services Division
Title

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