

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

IN THE MATTER OF)	
)	
S. M.)	
)	Case No. OAH 10-0023-PFD
<u>2009 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

S. M. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. M. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. M.’ request, a formal hearing was held on February 23, 2010. PFD Specialist Bethany Chase appeared at the hearing in person in Juneau. Ms. M. did not appear. This decision is therefore based on the record in accordance with 15 AAC 05.030(j).¹

Because Ms. M. was incarcerated during the qualifying year as the result of a misdemeanor conviction and she has been previously convicted of at least two other misdemeanors, she is not eligible for a 2009 dividend.

II. Facts

The Department of Corrections advised the division that Ms. M. had been incarcerated during part of 2008 as the result of a misdemeanor conviction, and that she has previously been convicted of two or more misdemeanors. In her appeal, Ms. M. wrote “the decision was made because I was incarcerated during 2008, but not convicted of a misdemeanor. I was wrongly accused of a crime of assault I did not commit. I fought the case and won.” The division consulted again with the Department of Corrections, and learned that Ms. M. was correct in that there had been an assault case late in 2008 for which Ms. M. had been incarcerated, but in the end she had not been convicted in that case. However, the department also indicated that Ms. M. was incarcerated from January 3, 2008 until January 22, 2008 based on a conviction stemming from a 2006 case, and that she had been convicted of at least two misdemeanors before this case. Ms. M. has not disputed these facts.

¹ Ms. M. was sent written notice of the hearing. The division stated that after a recent telephone discussion, Ms. M. indicated that she wished to withdraw her appeal. Ms. M. has not contacted the Office of Administrative Hearings or provided any written indication that she wished to withdraw her appeal.

III. Discussion

The state law that governs this case is Alaska Statute 43.23.005(d), which reads in part, 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...misdemeanor if the individual has been convicted of...two or more prior misdemeanors.

While Ms. M. was correct about the most recent period of incarceration not being the result of a conviction, she has not disputed that she was also incarcerated for a period earlier in 2008 as the result of a misdemeanor conviction in a different case. The division was therefore correctly applying the law when it made the decision to deny Ms. M.' application for a 2009 dividend.

IV. Conclusion

Ms. M. was incarcerated during a part of the qualifying year as the result of a misdemeanor conviction, and she has previously been convicted of at least two misdemeanors. The division was correctly applying AS 43.23.005(d) when it made the decision to deny Ms. M.' application for a 2009 dividend.

DATED this 5th day of March, 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 7th day of April, 2010.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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