

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

IN THE MATTER OF	)	Case No. OAH 10-0470-PFD
	)	
J. T.	)	
	)	Agency Case No. 2010-029-2592
<u>2010 Permanent Fund Dividend</u>	)	

**DECISION & ORDER**

**I. Introduction**

J. T. timely applied for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division (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. The division was represented by PFD Specialist Bethany Chase, who filed a position paper. Mr. T. did not contest any facts in his request a formal hearing and did not respond to the division’s position paper.

This case is Mr. T.’s appeal of the division’s determination that the time that he served in jail in 2009 disqualified him from eligibility for a 2010 PFD. Mr. T. simply failed to show that this determination was incorrect.

**II. Facts**

Department of Corrections records show that Mr. T. was held in custody for a misdemeanor conviction in 2009 after having been convicted of two prior misdemeanors after 1996.<sup>1</sup> In his request for a formal hearing, Mr. T. did not provide evidence that contradicted these records. Mr. T. agreed that all of the division’s factual determinations were correct in his request for a formal hearing. Mr. T. only wrote that he was sorry that he had “done it again,” and would very much like his PFD to be applied to his electric bill.<sup>2</sup>

**III. Discussion**

This case is governed by AS 43.23.005(d)(2), 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

- (1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;

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<sup>1</sup> Exhibits 4 & 6.

<sup>2</sup> Exhibit 5.

- (2) 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.

In an appeal of a PFD denial, the person who filed the appeal, in this case Mr. T., has the burden of proving by a preponderance of the evidence that the division's denial was incorrect.<sup>3</sup> In his request for a formal hearing, Mr. T. did not meet this burden, and he did not file anything after he filed his request for a formal hearing. Mr. T. did not show that the division's determination that he was held in custody in 2009 for a misdemeanor conviction after having been convicted of two prior misdemeanors after 1996 was incorrect.

**IV. Conclusion**

Mr. T.'s prior convictions and his period of incarceration in 2009 make Mr. T. ineligible for a 2010 PFD.

**V. Order**

IT IS HEREBY ORDERED that the application of J. T. for a 2010 permanent fund dividend be denied.

DATED this 16<sup>th</sup> day of November, 2010.

By: *Signed* \_\_\_\_\_  
Mark T. Handley  
Administrative Law Judge

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<sup>3</sup> Alaska Regulation 15 AAC 05.030(h).  
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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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29<sup>th</sup> day of December, 2007.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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