

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

IN THE MATTER OF)	
)	
B K)	Case No. OAH 11-0442-PFD
)	Agency Case No. 2011-041-3877
<u>2011 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

B K timely applied for a 2011 permanent fund dividend (PFD). The Permanent Fund Dividend Division (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. The division was represented by PFD Specialist Bethany Chase, who filed a position paper. Mr. K did not respond to the division’s position paper.

This case is Mr. K’s appeal of the division’s determination that the time that he served in jail in 2010 disqualified him from eligibility for a 2011 PFD. Administrative Law Judge Mark T. Handley heard the appeal. Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. K simply failed to show that the division’s determination was incorrect. The division denial of the application of B K for a 2011 permanent fund dividend is therefore affirmed.

II. Facts

Department of Corrections records show that Mr. K was held in custody for a misdemeanor conviction in 2010 after having been convicted of two prior misdemeanors after 1996.¹ In his request for a formal hearing, Mr. K did not provide evidence that contradicted these records. Mr. K wrote provided his views about the circumstance surrounding one of his arrests in his request for a formal hearing. Mr. K also indicated that he has a mental illness.² Mr. K’s 2010 PFD application was also denied because he had been convicted of multiple misdemeanor offenses since 1996 and was incarcerated in 2009. This denial was upheld after a formal hearing in case number OAH 10-0532-PFD. The division took some trouble to carefully confirm the Department of Correction records from that Mr. K also served in jail in 2010 as the result of a conviction.³ The division may have taken this trouble because of the apparent difficulty that Mr. K had explaining his concerns

¹ Exhibits 4, 7 & 8.

² Exhibit 5.

³ Exhibits 7 & 8.

about the division's denial of his 2011 PFD in his request for an informal appeal. These records show that Mr. K was incarcerated from December of 2009 through April 6, 2010 for a misdemeanor conviction in case number 3ANXXXXXXCR.⁴

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;
- (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. K, has the burden of proving by a preponderance of the evidence that the division's denial was incorrect. In his request for a formal hearing, Mr. K did not meet this burden, and he did not file anything after he filed his request for a formal hearing. Mr. K did not show that the division's determination that he was held in custody in 2010 for a misdemeanor conviction after having been convicted of two prior misdemeanors after 1996 was incorrect.

IV. Conclusion

Mr. K's prior convictions and his period of incarceration in 2010 make Mr. K ineligible for a 2011 PFD.

DATED this 24th day of January, 2012.

By: Signed
Mark T. Handley
Administrative Law Judge

⁴ Exhibit 4 page 5 & Exhibits 7 & 8.

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 6th day of March, 2012.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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