

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

In the Matter of:)	
)	
D J)	
)	OAH No. 11-0469-PFD
<u>2011 Permanent Fund Dividend</u>)	Agency No. 2011-029-7336

DECISION

I. Introduction

The Permanent Fund Dividend Division (division) denied Mr. J's 2011 timely filed Permanent Fund Dividend (PFD) application because, under AS 43.23.005(d)(2), an individual is not eligible to receive a PFD if during any part of the qualifying year the applicant was incarcerated as the result of a felony conviction. It is undisputed that Mr. J was incarcerated for a felony conviction during the qualifying year for the 2011 PFD.

Mr. J challenged the division's denial and requested a formal appeal by correspondence. The parties were provided an opportunity to submit additional argument or evidence. The division submitted its Formal Hearing Position Statement. Mr. J did not submit additional documents or argument beyond what he had already provided with his prior appeal and in support of his request for a formal appeal. Because it is undisputed that Mr. J was incarcerated in the qualifying year, 2010, as a result of a felony conviction, he is not eligible to receive the 2011 PFD.

II. Facts

It is undisputed that Mr. J was convicted of a felony and was incarcerated as a result of that felony conviction¹. The felony conviction that has resulted in his incarceration is under appeal, but as of the date of this decision there is nothing to indicate it has been overturned.

III. Discussion

The division must apply the statutes and regulations as written. Alaska Statute 43.23.005(d) reads:

¹ Exh. 5 at 2. Many of Mr. J's challenges are countered by his own assertions. For example, he admits that he was incarcerated, but challenges the sufficiency of the unsworn verification. His admission overrides whatever hearsay objection he may have had.

. . . an individual is not eligible for a permanent fund dividend for a dividend year when

. . .

(2) during all or part of the calendar year immediately preceding that dividend 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 two or more prior crimes as defined in AS 11.81.990.²

Mr. J was incarcerated as a result of a felony conviction. While he may disagree with the outcome of the criminal matter, until the court reverses or vacates the conviction that resulted in the disqualifying incarceration, the division must recognize the conviction and resulting incarceration as lawful.³ Mr. J's appeal fails as a matter of law.

IV. Conclusion

Mr. J does not deny that he was incarcerated in 2010 as a result of a felony conviction. While he has appealed his conviction, it has not been overturned or vacated. Therefore, the division's denial of Mr. J's 2011 PFD application is affirmed.

DATED this 11th day of June, 2012.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

² AS 43.23.005(d)(2).

³ 15 AAC 23.183.

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 16th day of July, 2012.

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

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