

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

IN THE MATTER OF)	
N O)	Case No. OAH 12-0162-PFD
)	Agency Case No. 2011-067-5411
<u>2011 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

This case is N O’s appeal of the division’s determination that he is disqualified from eligibility for a 2011 PFD because his application was late, he was incarcerated in 2010 for a felony conviction, and was on a disqualifying absence in 2010. Mr. O filed a late application for a 2011 permanent fund dividend (PFD). The Permanent Fund Dividend Division (division) determined that Mr. O was not eligible, and it denied the application initially and at the informal appeal level. Mr. O requested a formal hearing by written correspondence. The division was represented at the hearing by PFD Specialist Bethany Thorsteinson, who filed a position paper.

Administrative Law Judge Mark T. Handley heard the appeal. Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. O is disqualified for three different reasons. Any of these reasons would be enough to disqualify him. Mr. O is disqualified from 2011 PFD eligibility for his incarceration while serving part of his sentence for the felony conviction in 2010. Mr. O is disqualified for filing a late PFD application. Mr. O is disqualified for being absent for more than 180 days from Alaska while he was in prison. The division’s denial of Mr. O’ 2011 permanent fund dividend application is upheld.

II. Facts

Department of Corrections records show that Mr. O incarcerated for a felony conviction in 2010.¹ Mr. O 2011 PFD application was postmarked April 1, 2011. Mr. O was absent 197 days in 2010 in prison in Arizona. In his request for a formal hearing, Mr. O does not dispute the division’s determination that he was incarcerated for a felony in 2010, that his application was late or that he was absent 197 days in 2010 in prison in Arizona.²

III. Discussion

In an appeal of a PFD denial, the person who filed the appeal, in this case Mr. O, has the burden of proving by a preponderance of the evidence that the division's denial was incorrect.³ Mr.

¹ Exhibit 6.

² Mr. O only filled out the front of his appeal form and did not provide any reasons for his appeal.

³ 15 AAC 05.030(h).

O did not dispute the division's factual findings that he was incarcerated in 2010 for a felony conviction. AS 43.23.005(d)(2) provides:

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.

Mr. O incarceration for a felony conviction disqualifies him for 2011 PFD eligibility under AS 43.23.005(d)(2).

Mr. O incarceration for a felony conviction also disqualifies him for 2011 PFD eligibility under Alaska Statute 43.23.008. Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(17)(A) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(1)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days, when not absent for any reason listed Alaska Statute 43.23.008(a)(1)-(16) during the qualifying year is not eligible for a PFD. Being absent from Alaska during a period of incarceration is not a reason listed Alaska Statute 43.23.008(a)(1)-(16).

Finally, Mr. O is disqualified from 2011 PFD eligibility because his application was postmarked after the deadline. For each dividend year, there is a three-month application period that starts on January 1, and ends on March 31 of the relevant year.⁴ The applicant has the responsibility of ensuring that his application is postmarked or received by this deadline.⁵ There are only two types of exceptions for the strict requirement that PFD applications be filed within the application period. The first is the exception is for Alaskans who are disabled due to a medical condition.⁶ Mr. O has never asserted that this exception applies to his case. The second is for

⁴ Alaska Statute 43.230011(b) & (c).

⁵ Alaska Regulation 15 AAC 23.103(g).

⁶ See Alaska Regulation 15 AAC 23.133(d).

active duty military personnel, but this exception is limited to those in hostile fire or imminent danger pay status during the application period, which also does not apply to Mr. O.⁷

IV. Conclusion

Mr. O’s incarceration for felony in 2010, his absence from Alaska in 2010 and his late application each make Mr. O ineligible for a 2011 PFD. The division denial of the application of N O for a 2011 permanent fund dividend is therefore affirmed.

DATED this 11th day of October, 2012.

By: Signed
Mark T. Handley
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 November, 2012.

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

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

⁷ Alaska Statute 43.230011(a).