



The qualifying year for the 2012 dividend was 2011. Thus, Mr. K is disqualified from eligibility for the 2012 dividend if he was incarcerated in 2011 as a result of conviction in Alaska of a misdemeanor, and he had been convicted of two or more prior misdemeanors. In his request for an appeal, Mr. K pointed out that the 2012 charges against him were dismissed.<sup>7</sup> But the 2012 charges have nothing to do with Mr. K's eligibility: the division denied his dividend based on the 2011 conviction and incarceration, and two prior misdemeanor convictions.

The record includes copies of electronic court records concerning Mr. K's 2011 misdemeanor conviction, and the preponderance of the evidence is that he was incarcerated for a few days as a result of that conviction.<sup>8</sup> The document submitted by the Department of Corrections asserts that Mr. K has three misdemeanor convictions, including one in 2011, and it references two prior cases: 4 XX 07-0000-CR, described as a "viol. Cond of rls" (violation of conditions of release) and 4 XX 97-0000-CR, described as "crim trespass" (criminal trespass).<sup>9</sup>

The document submitted by the Department of Corrections does not state that either of the two prior misdemeanors it references resulted in a conviction. Rather, it provides a charge or conviction date for both of them. However, Mr. K has not denied that he has two prior misdemeanor convictions, and he did not assert that either the 2007 and 1997 charges did not result in a conviction.

#### **IV. Conclusion**

In order to prevail, Mr. K had the burden of proving facts showing that the division's determination was incorrect.<sup>10</sup> Mr. K has not shown that the division erred in concluding that he is ineligible for the 2012 dividend, based on his incarceration in 2011 and the existence of two prior misdemeanor convictions. Accordingly, the division's denial of his application is

**AFFIRMED.**

DATED April 16, 2013.

*Signed*  
\_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

---

<sup>7</sup> Ex. 3, p. 2.

<sup>8</sup> Ex. 6, pp. 1-4.

<sup>9</sup> Ex. 6, p. 1.

<sup>10</sup> 2 AAC 64.290(e); 15 AAC 05.030(h).

## 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 15<sup>th</sup> day of May, 2013.

By: Signed  
Signature  
Andrew M. Hemenway  
Name  
Administrative Law Judge  
Title

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