

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

IN THE MATTER OF)	
)	
D E. J)	
)	OAH No. 13-0030-PFD
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-037-7237

DECISION

I. Introduction

D E. J's application for a 2012 permanent fund dividend (PFD) was denied because the Permanent Fund Dividend Division determined that Mr. J had been incarcerated during the qualifying year under circumstances that would render him ineligible. Following an unsuccessful informal appeal, Mr. J requested a formal appeal hearing to be held in person. When Mr. J did not appear at the time noticed for hearing, he was called at the telephone numbers provided. The phone number designated as his "message" number was answered and a message was left informing Mr. J that the record would remain open for ten days to provide him with an opportunity to show reasonable cause for his failure to participate in the hearing, and to request a supplemental hearing.¹ The record closed without further participation from Mr. J. The division's denial of Mr. J's application is affirmed because he did have a disqualifying incarceration during the qualifying year for the 2012 PFD.

II. Facts

Mr. J does not dispute that he was incarcerated during all of 2011 as the result of a felony conviction, 3AN-06-13605CR.² Rather, he asserts that his incarceration was illegal and unconstitutional.³

III. Discussion

AS 43.23.005(d)(2) provides that "an individual is not eligible for a permanent fund dividend for a dividend year when . . . 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. . . ." The statute counts convictions for criminal offenses committed on or after January 1, 1997.⁴

¹ 15 AAC 05.030(j).
² Exhibit 5.
³ Exhibit 5.
⁴ Sec. 6 ch. 46 SLA 1996 (quoted in editor's note to AS 4.23.005).

Mr. J does not challenge the division’s assertion that he has been incarcerated for all of 2011 as the result of a felony conviction for a criminal offense committed after January 1, 1997. The qualifying year for a 2012 dividend is 2011.⁵ Therefore, under AS 43.23.005(d)(2)(A), Mr. J is not eligible for a 2012 PFD.

Mr. J challenges the legality and constitutionality of his incarceration. The legality and constitutionality of a disqualifying conviction are beyond the jurisdiction of this tribunal. A Department of Revenue regulation, 15 AAC 23.183, establishes a procedure for late payment of dividends to people whose convictions are overturned on appeal. Subsection (b) of that regulation provides that an individual who was “correctly identified as incarcerated,” and thereby denied a dividend, may file a special, delayed appeal of the denial “within 60 days of the reversal or vacating of the disqualifying convictions for which the individual was incarcerated.” Should Mr. J successfully challenge his conviction and the conviction is overturned, he should promptly file a new appeal regarding his 2012 PFD. The result of this appeal will not bar him from doing so.

IV. Conclusion

Mr. J’s incarceration in 2011 as a result of a felony conviction disqualifies him from a 2012 PFD. The decision of the Permanent Fund Dividend Division to deny the application of D E. J for a 2012 permanent fund dividend is AFFIRMED without prejudice to Mr. Hermann’s right to renew his appeal under 15 AAC 23.183(b) in the event that the conviction(s) underlying his 2011 incarceration is/are vacated or reversed.

DATED this 12th day of March, 2013.

By: *Signed* _____
Rebecca L. Pauli
Administrative Law Judge

⁵ AS 43.23.095(6).

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 8th day of April, 2013.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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