

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

In the Matter of:)	
)	
E R. H)	
)	OAH No. 13-0106-PFD
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-037-7312

DECISION

I. Introduction

E H applied for a 2012 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (division) denied his application because Mr. H had been incarcerated in 2011 as a result of a misdemeanor conviction.¹ Mr. H requested a formal hearing.

A hearing was held on March 4, 2013. Mr. H appeared in person. PFD Specialist Bethany Thorsteinson represented the division and appeared by telephone. Based on the evidence in the record, the division's determination is upheld.

II. Facts

The relevant facts are not in dispute. Mr. H had two misdemeanor convictions in 2008. One conviction was for assault, and the other was for violating conditions of parole.² He was convicted again in 2011 on a misdemeanor driving under the influence charge.³ He was incarcerated during part of 2011 as a result of that conviction.⁴

III. Discussion

The division looks at the 2011 qualifying year to determine eligibility for a 2012 PFD. There are several different eligibility requirements for receiving a PFD. A person is not eligible if he or she is incarcerated at any time during the qualifying year as a result of a misdemeanor conviction if that conviction is the applicant's third misdemeanor.⁵

Not every period of incarceration is a result of a new conviction. For example, a probation violation can result in incarceration based on the previous conviction, and is not

¹ The division had originally thought he had been incarcerated as a result of a felony conviction, but corrected that determination at the informal appeal level.

² Exhibit 9; Testimony of Mr. H.

³ Exhibit 9, Testimony of Mr. H.

⁴ Exhibit 9, Testimony of Mr. H.

⁵ AS 43.23.005(d) (This only applies to misdemeanors after December 31, 1996).

considered a new misdemeanor.⁶ In this case, however, both 2008 convictions were misdemeanors,⁷ and Mr. H acknowledged that the 2011 misdemeanor conviction was his third conviction. Mr. H is not eligible for a 2012 PFD because he was incarcerated during the 2011, which is the qualifying year for a 2012 PFD, and because that incarceration was as a result of his third misdemeanor. Assuming he meets the other eligibility requirements, and was not incarcerated during 2012, Mr. H should be eligible to receive a 2013 PFD.

IV. Conclusion

Mr. H was incarcerated during the 2011 qualifying year as a result of his third misdemeanor. Accordingly, the division correctly determined that he was not eligible to receive a 2012 PFD.

Dated this 4th day of March, 2013.

Signed _____
Jeffrey A. Friedman
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 1st day of April, 2013.

By: *Signed* _____
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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

⁶ *In re T.B.*, OAH No. 09-0001-PFD (Commissioner of Revenue 2009), page 3.

⁷ Testimony of Mr. H. *See* AS 11.56.757 (violation of condition of release is a misdemeanor).