

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

In the Matter of:)	
)	
T I. X)	OAH No. 13-0138-PFD
)	
<u>PFD Years 2009-2012</u>)	PFD No. 2012-056-9669

CORRECTED DECISION

I. Introduction

The Permanent Fund Dividend Division denied T X's application for a 2012 Alaska Permanent Fund dividend on the grounds that she was sentenced and incarcerated for a felony during the qualifying year, 2011. It also denied her appeal relating to back years 2009 and 2010. Ms. X appealed and requested a formal hearing. Because she confirmed that she did wish to appeal her denial for 2012, and because the appeals for 2009 and 2010 are untimely, the Division's decisions are affirmed.

II. Facts

T X's application for a dividend in 2012 was denied because she was sentenced and incarcerated for a felony during the qualifying year, 2011.¹ On December 10, 2012, after the denial was affirmed in an informal appeal, Ms. X filed a request for a formal hearing with the Permanent Fund Dividend Division.² She listed years 2009 and 2010 as the dividend years under appeal.³ She had listed 2012 also, but had crossed it out. The Division treated this request as a request for an informal appeal for the 2009 and 2010 dividends, and denied the appeal.⁴ Ms. X was informed she could request a formal hearing on this denial, and that the deadline for mailing the request was February 8, 2013. On January 24, 2013, the Division received a second request for a formal hearing, this time designating dividend years 2012 and 2013 as under appeal.⁵ She also listed dividend years 2008-11 as under appeal for her child.⁶ Ms. X requested

¹ Exhibit 2 to Division's Motion to Dismiss. These facts make Ms. X ineligible under AS 23.05.005(d).
² Exhibit 1.
³ *Id.*
⁴ Division's Motion to Dismiss at 2.
⁵ Exhibit 6.
⁶ *Id.*

a hearing by written correspondence, but later contacted the Office of Administrative Hearings, and requested an oral hearing.

On February 15, 2013, the Division filed a motion to dismiss the appeal request, arguing that Ms. X's appeal of the dividend for 2012 was not timely because the appeal of the denial of 2012 was due on January 4, 2013, and the appeal request was not received until January 24, 2013.⁷ The Division also argued that an appeal relating to the 2013 dividend would be premature and that the appeal process was not the proper method for addressing an application for Ms. X's child because it had no record of ever denying that child. Ms. X did not respond in writing to the motion, but the motion was held pending the hearing to give Ms. X an opportunity to clarify her intent.

Ms. X appeared telephonically at an oral hearing on March 18, 2013. Ms. X clarified that she did not want to appeal the denial of her 2012 dividend.⁸ Her intent was to appeal back years in which she did not receive a dividend. She also noted that she was trying to reopen her criminal case, and hoped to have her conviction reversed. On that issue, the Division directed Ms. X to 15 AAC 23.183, and informed Ms. X that she would have 60 days after her conviction had been reversed or vacated to file with Division for her 2012 dividend. Other than her own PFDs for back years, Ms. X did not identify any additional decision of the Division that she believed was in error.

III. Discussion

With regard to the denial of her 2012 dividend, Ms. X admits that she was sentenced on May 3, 2011, and she does not deny that she was incarcerated for a felony during 2011.⁹ Therefore, under AS 43.23.005(d), Ms. X was not eligible for a dividend in 2012. Given that Ms. X has clarified that she did not intend to appeal the denial of her 2012 dividend, that denial is affirmed.

An appeal relating to old dividend years would not be timely.¹⁰ Absent good cause for delay, an appeal of a denial of permanent fund dividend denial must be filed within thirty days of the denial.¹¹ Here, Ms. X did not argue that she has good cause for delay relating to the old dividends. As her application and appeal for 2012 shows, she is not incapacitated, and would

⁷ Division's Motion to Dismiss at 2-3.

⁸ X testimony.

⁹ Division Exhibit 3 at 2.

¹⁰ 15 AAC 05.010(b).

¹¹ *Id.*

have been able to appeal old years at an earlier date. Those years are now closed, and will not be reopened on appeal.

IV. Conclusion

Because T X was sentenced and incarcerated for a felony in 2011, and she confirmed that she did wish to appeal the denial of her 2012 dividend, the Permanent Fund Dividend Division's denial of her 2012 permanent fund dividend is affirmed. Because closed dividend years will not be reopened, the Division's denial of Ms. X's appeal for dividend years 2009 and 2010 is also affirmed.

DATED April 24, 2013

Signed

Stephen C. (Neil) Slotnick
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 6th day of May, 2013.

By: Signed

Signature
Angela M. Rodell

Name
Deputy Commissioner

Title

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