

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

In the Matter of: )  
 )  
 K B )  
 )  
 2012 Permanent Fund Dividend ) OAH No. 13-0235-PFD  
 Agency No. 2012-035-6433

**DECISION**

**I. Introduction**

K B applied for a 2012 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (division) denied his application because Mr. B had been incarcerated during 2011 as a result of a felony conviction.<sup>1</sup> Mr. B requested a formal hearing.

A hearing was held on April 2, 2013. Mr. B appeared by telephone. PFD Specialist Peter Scott represented the division, and also 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. B was convicted in 2010 for a violation of AS 11.46.130, theft in the second degree.<sup>2</sup> He was sentenced to 24 months in jail, all of which was suspended.<sup>3</sup> A Petition to Revoke Probation was subsequently filed, and Mr. B was required to serve previously suspended jail time.<sup>4</sup> Mr. B testified that he was incarcerated during the 2011 calendar year.

**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. One of those requirements relates to incarceration. A person is not eligible if he or she is incarcerated at any

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

<sup>2</sup> Exhibit 9, page 4.

<sup>3</sup> Exhibit 9, page 4.

<sup>4</sup> Exhibit 9, page 4. This document lists his conviction as a violation of AS 11.46.130(a)(1), which applies to theft of property valued between \$500 and \$24,999. Mr. B's judgment of conviction states the value was between \$50 and \$499. Theft in this amount can be a felony. AS 11.46.130(a)(6). Mr. B testified that his conviction was in fact a felony conviction.

time during the qualifying year as a result of a felony conviction.<sup>5</sup> This includes incarceration for a probation violation when the original sentence was for a felony.<sup>6</sup>

Mr. B's appeal states that he has changed since his conviction, and he is trying hard to support his family. There is no reason to doubt his sincerity. However, the statutes related to PFD eligibility are quite specific with regards to incarceration. There is no discretion to ignore those statutes.

#### **IV. Conclusion**

Mr. B was incarcerated during the 2011 qualifying year as a result of a felony conviction. Accordingly, the division correctly determined that he was not eligible to receive a 2012 PFD.

Dated this 4<sup>th</sup> day of April, 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 3<sup>rd</sup> day of May, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jeffrey A. Friedman  
Title: Administrative Law Judge

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

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<sup>5</sup> AS 43.23.005(d)(2)(A).

<sup>6</sup> *In re M.K.*, OAH No. 11-0464-PFD (Department of Revenue 2012). *In re T.B.*, OAH No. 09-0001-PFD (Department of Revenue 2009) (Probation revocation is not a new conviction, and time served as a result of revocation relates to original conviction).