

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

In the Matter of:	)	
	)	
E Z	)	OAH No. 13-1651-PFD
	)	
<u>PFD Year 2013</u>	)	PFD No. 2013-015-5312

**DECISION**

**I. Introduction**

The Permanent Fund Dividend Division denied E Z's application for a 2013 Alaska Permanent Fund dividend because she was incarcerated for a misdemeanor during the qualifying year, 2012, after having been convicted of two or more misdemeanors in the past. Ms. Z appealed and requested a formal hearing. Because her time spent at No Name Recovery Center fits the definition of incarceration, the Division's denial is affirmed.

**II. Facts**

On April 1, 2012, the State filed a misdemeanor complaint against E Z, charging her with assault in the fourth degree.<sup>1</sup> She was released on bail.<sup>2</sup> On July 16, 2012, the court issued an order amending her conditions of release to require that she enroll in a residential treatment program at No Name Recovery.<sup>3</sup> As part of the order, she was "order[ed] to remain on the grounds of the treatment facility or be in the physical custody of an employee of the facility."<sup>4</sup> She did enroll in No Name Recovery and completed 28 days in the program. On September 13, 2012, the court entered a misdemeanor judgment against Ms. Z, sentencing her to 28 days in jail with credit for the 28 days spent in No Name Recovery Center.<sup>5</sup>

On July 19, 2013, the Division denied Ms. Z's application for a 2013 PFD because her incarceration made her ineligible under AS 43.23.005(d)(2)(B)(ii). Under this statute, an applicant is ineligible if the applicant had been convicted of two or more prior misdemeanors and was incarcerated for a misdemeanor during the qualifying year.<sup>6</sup> Ms. Z filed an informal appeal,

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<sup>1</sup> Division Exhibit 12 at 22.

<sup>2</sup> *Id.* at 24.

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* Exceptions were permitted for court appearances, meetings with counsel, and court-approved required work. *Id.*

<sup>5</sup> *Id.* at 12.

<sup>6</sup> AS 43.23.005(d)(2)(B)(ii).

and the denial was upheld by the Division. On November 5, 2013, Ms. Z requested a formal appeal, with the appeal to be by correspondence—meaning that no oral hearing would be held, but each party would file written arguments. On November 19, 2013, Ms. Z was notified that initial deadline for filing her written argument was December 19, 2013, and that the deadline for responsive filings was January 2, 2014. Ms. Z did not file any documents in support of her appeal.

### **III. Discussion**

Ms. Z's argument on informal appeal was that her time in No Name Recovery was not incarceration. Under the definition adopted into regulation, however, the term "incarcerated" includes confinement "under a court order for a conviction" in a "treatment center."<sup>7</sup> Here, although the conviction was entered after the confinement to the treatment center, the order of confinement was based on the expected conviction, and Ms. Z was, in fact, convicted. Therefore, Ms. Z's confinement to No Name Recovery in July 2012 constitutes incarceration for a misdemeanor. Because she does not deny that she had two or more misdemeanor convictions in the past,<sup>8</sup> she is not eligible for 2013 PFD.

### **IV. Conclusion**

The Permanent Fund Dividend Division's denial of E Z's 2013 permanent fund dividend is affirmed.

DATED January 7, 2014

*Signed*  
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Stephen C. (Neil) Slotnick  
Administrative Law Judge

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<sup>7</sup> 15 AAC 23.993(a)(15).  
<sup>8</sup> See Division Exhibit 13.

## 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 February, 2014.

By: Signed  
Signature  
Stephen C. Slotnick  
Name  
Administrative Law Judge  
Title

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