

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

IN THE MATTER OF	)	
K X	)	OAH No. 13-1699-PFD
	)	Agency Case No. 2013-027-2072
<u>2013 Permanent Fund Dividend</u>	)	

**DECISION & ORDER**

**I. Introduction**

This case is K X’s appeal of the determination by the Permanent Fund Dividend Division (division) that he is disqualified him from eligibility for a 2013 permanent fund dividend (PFD), because he was incarcerated for a felony conviction in 2012. Mr. X argued that his PFD should not have been denied because the conviction that led to his incarceration is being appealed.

Mr. X timely applied for a 2013 permanent fund dividend (PFD). The Division determined that Mr. X was not eligible, and it denied the application initially and at the informal appeal level. Mr. X requested a formal hearing by written correspondence. The division was represented by PFD Specialist Pete F. Scott, who filed a position paper.

Administrative Law Judge Mark T. Handley heard the appeal. Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. X is disqualified despite his conviction being on appeal. If Mr. X’s appeal is successful he may seek relief from his disqualification at that time. The division denial of the application of K X for a 2013 permanent fund dividend is affirmed.

**II. Facts**

Alaska Department of Corrections records show that Mr. X incarcerated for a felony conviction in 2012.<sup>1</sup> In his request for a formal hearing, Mr. X does not dispute the division’s determination that he was his convicted of a felony and was incarcerated as a result of that conviction in 2012. Mr. X argues that his conviction is not final until his appeal of the criminal conviction has been decided. Mr. X explained that his believes that felony conviction will be overturned and that the charges against him will be dropped. Mr. X also believes that the Division allows some inmates to receive PFDs while their convictions are being appealed.<sup>2</sup> Mr. X provided documentation of his appeal.<sup>3</sup>

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<sup>1</sup> Exhibit 2.

<sup>2</sup> Exhibit 3, page 4.

<sup>3</sup> Exhibit 6, page 3.

### III. Discussion

This case is governed by AS 43.23.005(d)(2), which states:

Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

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- (2) during all or part of the qualifying year, the individual was incarcerated as a result of conviction in this state of a (A) felony. . .

In an appeal of a PFD denial, the person who filed the appeal, in this case Mr. X, has the burden of proving by a preponderance of the evidence that the division's denial was incorrect.<sup>4</sup> In his request for a formal hearing, Mr. X did not dispute the division's factual finding that he was incarcerated for a felony in 2012. Mr. X's argument is legal rather than factual. Mr. X argues that his PFD application should not be denied based on his felony conviction until all his appeal before the Alaska Supreme Court has been decided.

Mr. X may qualify to receive a 2013 PFD after his appeal is decided. Mr. X will have the opportunity to show that he is eligible for a 2013 PFD if his conviction is overturned. In the meantime, however, the division has correctly determined that it cannot pay Mr. X a 2013 PFD. The eligibility of PFD applicants who were disqualified as the result of a conviction that is subsequently overturned is governed by Alaska Regulation 15 AAC 23.183(b) which provides:

(b) An individual who was correctly identified as incarcerated or sentenced for an offense as described in AS 43.23.005 (d), and consequently was denied a dividend, may appeal a denial of a dividend issued under AS 43.23.005(d) within 60 days of the reversal or vacating of the disqualifying convictions for which the individual was incarcerated or sentenced. The department will overturn any denial of an individual who

(1) has a valid appeal of the individual's dividend denial pending before the department or a court;

(2) can demonstrate to the department's satisfaction that all disqualifying convictions for which the individual was incarcerated or sentenced during the qualifying year for that dividend have been vacated or reversed; and

(3) is otherwise eligible for the dividend.

Thus, 15 AAC 23.183(b) provides relief to PFD applicants who were disqualified as the result a subsequently overturned conviction. As can be seen from the language above, however,

that relief cannot be provided unless the applicant timely files an appeal after the disqualifying conviction is overturned. The division concedes in its position paper that Mr. X will have an opportunity to prove his eligibility for a 2013 PFD if his conviction is overturned on appeal.

**IV. Conclusion**

Mr. X's incarceration for a felony conviction in 2012 makes Mr. X ineligible for a 2013 PFD, unless that conviction is overturned. The division's denial of Mr. X's application for a 2013 permanent fund dividend will stand. This decision does not prevent Mr. X from applying for relief under Alaska Regulation 15 AAC 23.183(b).

DATED this 21<sup>st</sup> day of January, 2014.

By: Signed  
Mark T. Handley  
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 19<sup>th</sup> day of February, 2014.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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

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<sup>4</sup> 15 AAC 05.030(h).