

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

In the Matter of:)	
)	
Q J)	OAH No. 14-0473-PFD
)	PFD No. 2011-058-7174
<u>PFD Year 2011</u>)	

DECISION

I. Introduction

The Permanent Fund Dividend Division denied Q J’s application for a 2011 Alaska Permanent Fund dividend because he was incarcerated for a felony during the qualifying year, 2010. In March 2014, Mr. J notified the Division that his 2010 conviction had been overturned in December 2013. Mr. J’s appeal was not timely because it was filed more than 60 days after he had notice of the reversal. Accordingly, the Division’s motion to dismiss Mr. J’s appeal is granted.

II. Facts

On September 10, 2010, Q J was sentenced for his conviction of two counts of felony failure to appear.¹ On July 15, 2011, the Permanent Fund Dividend Division denied Mr. J’s application for a 2011 PFD because Mr. J was sentenced for a felony offense during the qualifying year.

On December 18, 2013, the Alaska Court of Appeals reversed the conviction, finding that the trial judge did not properly instruct the jury on the elements of the crime of felony failure to appear. On March 19, 2014, based on this reversal, Mr. J forwarded a request for appeal to the Permanent Fund Division. In this request he asked for a formal hearing by correspondence.² The Division filed a motion to dismiss the appeal, arguing that it was not timely. Mr. J was notified that he should file information and explanations relating to his appeal by May 5, 2014, and that he could respond to any filing by the Division by May 19, 2014. Mr. J did file any documents or arguments.

III. Discussion

Mr. J’s 2011 PFD was denied under AS 43.23.005(d) because he was sentenced in 2010 for a felony. Under 15 AAC 23.183(b)(2), the department will overturn a denial under AS 43.23.005(d) if Mr. J can demonstrate “that all disqualifying convictions for which the

¹ Division Exhibit 3 at 7.
² Division Exhibit 5 at 1.

individual was incarcerated or sentenced during the qualifying year for that dividend have been vacated or reversed.” In order to have his PFD restored under (b)(2), however, Mr. J *must* have met the timeliness requirement contained in the body of the regulation, which requires that he file his appeal within 60 days of the reversal of the disqualifying conviction.³

Mr. J’s disqualifying conviction was his 2010 conviction for failure to appear. This conviction was reversed on December 18, 2013. Mr. J did not file an appeal based on the reversal until 91 days later, March 19, 2014. His appeal was not timely and therefore the Division’s motion to dismiss his appeal is granted.

IV. Conclusion

The Permanent Fund Dividend Division’s motion to dismiss Mr. J’s March 19, 2014 appeal of the denial of his 2011 dividend is granted. The appeal is dismissed and the Division’s denial of his 2011 dividend is affirmed.

DATED May 28, 2014

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 27th day of June, 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.]

³ _____
15 AAC 23.183(b).