

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

In the Matter of:)
)
 J P)
)
 2013 Permanent Fund Dividend) OAH No. 14-0492-PFD
 Agency No. 2013-062-1165

DECISION

I. Introduction

J P applied for a 2013 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (division) denied her application based on a finding that she had been incarcerated for a felony during part of the 2012 qualifying year.² At the informal appeal level, the denial was overturned.³ After further review, her application was again denied; this time, based on a finding that Ms. P had been incarcerated for a misdemeanor during 2012, and also had two prior misdemeanor convictions.⁴ Ms. P appealed again, and requested a formal hearing by written correspondence.⁵

The division submitted a written position statement. Ms. P did not provide any written documentation or argument other than what she stated in her request to appeal the division's decision. Based on reasonable inferences from the evidence in the record, the division correctly denied Ms. P's application.

II. Facts

The relevant facts are not in dispute. In response to a request from the division, the Department of Corrections verified that Ms. P had three misdemeanor convictions. She was convicted in August of 2007 for importing alcohol, in November of 2011 for disorderly conduct, and in October of 2012 for driving under the influence.⁶ Ms. P did not dispute these convictions,⁷ although she indicated that the first was stated somewhat inaccurately. The Department of Corrections had listed this as importing alcohol into a dry area, and Ms. P

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 5.
⁴ Exhibit 6.
⁵ Exhibit 10.
⁶ Exhibit 8.
⁷ Exhibit 10, page 2.

corrected it to be simply importing alcohol.⁸ She does not dispute that she had these three convictions, that they were for misdemeanors, or that she was incarcerated for the third misdemeanor from October 5, 2012 through October 13, 2012.⁹

III. Discussion

Alaska Statute 43.23.005 sets out a list of requirements for PFD eligibility. In this case, the only reason for determining that Ms. P was not eligible was the limitation set out in AS 43.23.005(d). That sub-section limits eligibility for certain individuals who are sentenced or incarcerated during the qualifying year.¹⁰

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

- (1) during the calendar year immediately preceding that dividend year the individual was sentenced as a result of conviction in this state of a felony;
- (2) during all or part of the calendar year immediately preceding that dividend year, the individual was incarcerated as a result of the conviction in this state of a

(A) felony; or

(B) misdemeanor if the individual has been convicted of

(i) a prior felony as defined in AS 11.81.900; or

(ii) two or more prior misdemeanors as defined in AS 11.81.900.^[11]

The provision that denies eligibility based on two or more prior misdemeanors only applies to misdemeanors committed after December 31, 1996.¹² The evidence in this case only shows the date of conviction for each offense, and not the date the crimes were actually committed. It is possible for someone to have committed a misdemeanor on or before December 31, 1996 and not be convicted until after December 31st. Thus, if any of the three misdemeanor convictions were based on criminal conduct that occurred in 1996 or earlier, Ms. P would be eligible for a 2012 PFD.

Ms. P's convictions were in 2007, 2011, and 2012. A reasonable inference is that the conduct leading to those convictions occurred less than ten years before the conviction. While

⁸ Exhibit 10, page 2.

⁹ See Exhibit 8, page 3.

¹⁰ The qualifying year is the year immediately preceding January 1 of the dividend year. AS 43.23.095(6).

¹¹ AS 43.23.005(d).

¹² *In re E.N.*, OAH No. 13-1690-PFD (Commissioner of Revenue 2014). Available on line at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD131690.pdf>.

that will not always be a correct inference,¹³ it was Ms. P's burden to prove that the division's decision was incorrect.¹⁴ Ms. P has not presented any evidence to show that the conduct that resulted in her convictions happened much earlier than the conviction date. Accordingly, she has not met her burden of proving the division's determination was incorrect.

IV. Conclusion

Ms. P was convicted and incarcerated for a misdemeanor during 2012, and had previously been convicted of two other misdemeanors. Because her incarceration was a result of her third misdemeanor, she is not eligible for a 2013 PFD, and the division's decision is **AFFIRMED**.

Dated this 27th day of May, 2014.

Signed

Rebecca L. Pauli
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 23rd day of June, 2014.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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

¹³ A conviction in 1997 would often be based on conduct that occurred in 1996. When there are delays in the trial and appellate process, it is possible for final convictions to occur many years after the underlying conduct.

¹⁴ 15 AAC 05.030(h).