

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

In the Matter of:)	
)	
E E)	OAH No. 14-1831-PFD
)	Agency No. 2014-059-3852
<u>2014 Permanent Fund Dividend</u>)	

DECISION

I. INTRODUCTION

This case is E E's appeal of the determination by the Permanent Fund Dividend Division (Division) that he is disqualified from eligibility for a 2014 Permanent Fund Dividend (PFD), because he was incarcerated for a felony conviction in 2013. Mr. E argued in his appeal papers that his PFD should not have been denied because the conviction that led to his incarceration was being appealed and he expected it to be overturned. He also stated that he filed the appeal in order to preserve his ability to recoup the PFD after his criminal conviction is overturned.

Mr. E timely applied for a 2014 PFD. The Division determined that he was not eligible, and it denied the application initially and at the informal appeal level. Mr. E requested a formal hearing. The Division was represented by PFD Specialist Pete F. Scott, who filed a position statement prior to the hearing. Mr. E appeared via telephone and represented himself.

Having heard Mr. E's testimony and reviewed the record, the Administrative Law Judge concludes that Mr. E is disqualified despite his conviction being on appeal at the time he requested this hearing. The Division's denial of Mr. E's application for a 2014 Permanent Fund Dividend is affirmed.

II. FACTS

Alaska Department of Corrections records show that Mr. E was incarcerated in 2013 for a probation violation stemming from a felony conviction.¹ In his request for a formal hearing, Mr. E did not dispute the Division's determination that he was convicted of a felony and was incarcerated as a result of that conviction in 2013. Rather, he argued that his conviction is not final until his appeal of the criminal conviction has been decided, and he believed that the felony

¹ Exhibit 4.

conviction would be overturned and the charges against him would be dropped. At the hearing, however, Mr. E confirmed that he had recently abandoned his appeal.²

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

(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. E, has the burden of proving by a preponderance of the evidence that the Division's denial was incorrect.³ In his request for a formal hearing, Mr. E did not dispute the Division's factual finding that he was incarcerated for a felony in 2013. His argument was legal rather than factual, i.e., he argued that his PFD application should not have been denied based on his felony conviction until his appeal before the Alaska Supreme Court was decided. His argument has been rendered moot, however, by his admission that he recently abandoned his appeal.⁴

In his request for hearing, and in his testimony during the hearing, Mr. E also raised an issue regarding PFDs from 2006, 2007, 2008 and 2009 that he alleges were denied by the Division while he was incarcerated in pre-trial status, prior to his felony conviction. It was explained to Mr. E that only the 2014 PFD is at issue in this appeal, and that he would have to pursue separate appeals regarding other PFD denials.

IV. CONCLUSION

Mr. E's incarceration for a felony conviction in 2013 makes him ineligible for a 2014 PFD. The Division's denial of Mr. E's application for a 2014 PFD is affirmed.

Dated this 26th day of November, 2014.

Signed

Andrew M. Lebo
Administrative Law Judge

² E Testimony.

³ 15 AAC 05.030(h).

⁴ Had Mr. E not abandoned his appeal, his PFD eligibility would have been governed by 15 AAC 23.183(b), which provides: "[a]n 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."

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 December, 2014.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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