

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

In the Matter of:)	
)	
Z D)	
)	OAH No. 14-1847-PFD
<u>2014 Permanent Fund Dividend</u>)	Agency No. 2014-013-5678

DECISION

I. Introduction

Z D applied for a 2014 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (division) denied her application because she had been incarcerated for a misdemeanor during 2013, and also had two prior misdemeanor convictions.² Ms. D appealed and requested a formal in-person hearing.³

The hearing was held December 8, 2014. The division participated by telephone through its representative, PFD Specialist Pete Scott. Fidel Morfin, also a PFD employee, was present as a translator. The Notice of Hearing was mailed to the latest address provided by Ms. D.⁴ At the appointed time she was called at the telephone number she provided and at another number on file with the division. Neither number was answered. The record remained open for ten days to provide Ms. D with an opportunity to show reasonable cause for her failure to participate in the hearing.⁵ The record closed without further participation from Ms. D. Based on the evidence in the record, the division correctly denied Ms. D's application.

II. Facts

The relevant facts are not in dispute. In response to a request from the division, the Alaska Department of Corrections verified that Ms. D had three misdemeanor convictions.⁶ She was incarcerated from January 30, 2013 – February 7, 2013 for a misdemeanor assault conviction (3AN-12-00000CR). She was convicted in January of 2008 for shoplifting and in

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 6.

⁴ As required by regulation, the record remained open for 10 days to provide Ms. D with an opportunity to show reasonable cause for her failure to participate. 15 AAC 05.030(j).

⁵ 15 AAC 05.030(j).

⁶ Exhibit 4

August of 2006 for disorderly conduct.⁷ These misdemeanors were committed after 1996.⁸ Ms. D did not present evidence disputing that she had two misdemeanor convictions, or that she was incarcerated for a third misdemeanor in 2013.⁹

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. D 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

Ms. D's convictions were in 2006, 2008, and 2013. It was Ms. D's burden to prove that the division's decision was incorrect.¹³ She has not presented any evidence to show that the division's decision was incorrect. The unchallenged evidence in this case establishes that the three misdemeanor convictions were based on criminal conduct that occurred after 1996 so she is not eligible for a 2014 PFD. Ms. D has not met her burden.

⁷ Exhibits 4, 8, and 9.

⁸ Exhibits 7, 8 and 9.

⁹ Ms. D failed to appear or submit evidence in support of her appeal. The request for hearing does not identify which fact she disputes. Exhibit 6.

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>.

¹³ 15 AAC 05.030(h).

IV. Conclusion

Ms. D was convicted and incarcerated for a misdemeanor during 2013, 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 2014 PFD, and the division’s decision is AFFIRMED.

Dated this 22nd day of December, 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 20th day of January, 2015.

By: *Signed* _____
Signature
Rebecca L. Pauli _____
Name
Administrative Law Judge _____
Title

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