

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

In the Matter of)
)
 T B)
)
 2014 Permanent Fund Dividend) OAH No. 14-1966-PFD
 Agency No. 2014-034-2043

DECISION & ORDER

I. Introduction

T B's 2014 Permanent Fund Dividend (PFD) was denied because the Permanent Fund Dividend Division (Division) determined that she was incarcerated during the qualifying year under circumstances that render her ineligible. Following an unsuccessful informal appeal, Ms. B requested a formal hearing. A telephonic hearing took place on December 11, 2014. Ms. B represented herself and Bethany Thorsteinson presented evidence on the Division's behalf.

The Division's denial of Ms. B's application is affirmed because she had a disqualifying incarceration.

II. Facts

T B applied for a 2014 PFD.¹ The Division denied her application because it determined she was incarcerated during 2013, the qualifying year.² Ms. B requested an informal appeal.³ The Division denied her request for informal appeal and upheld her PFD denial because her informal appeal request was late-filed.⁴ On October 30, 2014, Ms. B filed a request for formal appeal.⁵ The formal appeal request challenged the Division's finding that she was incarcerated during 2013; it did not address the late-filed informal appeal.⁶ The Division filed a motion to dismiss late appeal request because Ms. B's informal appeal request was postmarked August 26, 2014, nine days after the filing deadline.⁷ The motion to dismiss was denied and a hearing on whether Ms. B had a disqualifying incarceration went forward.

¹ Exhibit 1.
² Ex. 2.
³ Ex. 3.
⁴ Ex. 4.
⁵ Ex. 6.
⁶ Ex. 6.
⁷ Division's motion to dismiss/Division position (November 25, 2014).

On October 21, 2013, Ms. B was charged with and convicted of Assault in the 4th Degree- Reckless Injury, a class A misdemeanor.⁸ She was sentenced to 40 days in jail, with 39 days suspended. Ms. B was released on October 21, 2013, the same day as her arrest.⁹ Ms. B had two previous misdemeanor convictions.¹⁰ The Department of Corrections verified both the October 21, 2013, conviction and the two prior convictions.¹¹ At hearing, Ms. B testified that she was only in jail a few hours and she does not believe she was incarcerated.

III. Discussion

Under Alaska law, the person appealing a PFD denial has the burden of proving, by a preponderance of the evidence, that the denial was incorrect.¹²

The Alaska legislature has directed that “an individual is not eligible for a permanent fund dividend for a dividend year when . . . during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a misdemeanor if the individual has been convicted of . . . two or more prior misdemeanors as defined in AS 11.81.900.”¹³

The qualifying year for a 2014 dividend was 2013.¹⁴ Ms. B argues that because she was only in jail for a few hours in 2013, she was not incarcerated. However, incarceration “as a result of a conviction” makes one ineligible for the PFD. Ms. B was convicted and sentenced to 40 days in jail, with 39 days suspended. Ms. B was given one day credit for her time spent in jail, even though she was only held for a few hours. Prior case law has established that for PFD purposes time served starts on the beginning date of the conviction, even if that time was served prior to actual conviction.¹⁵ Therefore, the hours Ms. B spent in jail, for which she was given one day’s credit toward her sentence, is considered incarceration as a result of her conviction, and disqualifies her from 2014 PFD eligibility.

⁸ Ex. 7 – 8.

⁹ Ex. 7 – 8.

¹⁰ Ex. 5; Ex. 8.

¹¹ Ex. 5; Ex. 8.

¹² 15 AAC 05.030(h).

¹³ AS 43.23.005(d)(2)(B).

¹⁴ AS 43.23.095(6).

¹⁵ See *In re: L.A.N.*, OAH No. 08-0662-PFD (Dep’t of Revenue, May 11, 2009)(citing *State v. Anthony*, 810 P.2d 155 (Alaska 1991); *In re: A.P.*, 07-0343-PFD (Dep’t of Revenue, November 8, 2007)).

IV. Conclusion

Because Ms. B had a disqualifying incarceration during 2013, the Division’s decision to deny her 2014 PFD application is affirmed.

DATED December 12, 2014.

Signed _____
Bride Seifert
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 18th day of January, 2015.

By: *Signed* _____
Signature
Bride A. Seifert _____
Name
Administrative Law Judge _____
Title

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