

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

In the Matter of)	
)	
K T)	
)	OAH No. 14-2004-PFD
<u>2014 Permanent Fund Dividend</u>)	Agency No. 2015-055-2910

DECISION

I. Introduction

K T’s application for a 2014 permanent fund dividend (PFD) was denied because she was incarcerated during the qualifying year, 2013, as a result of her third misdemeanor conviction. Following an unsuccessful informal appeal, Ms. T requested a formal appeal. The case went to hearing on December 22, 2014.

Because Ms. T was incarcerated in the qualifying year, 2013, as a result of a disqualifying conviction, she is not eligible to receive the 2014 PFD.

II. Facts

Ms. T timely applied for a 2014 PFD. The division has raised no issue regarding Ms. T’s eligibility apart from her incarceration during the qualifying year, 2013.

Ms. T has the following misdemeanor criminal convictions:¹

Case No.	Charge/Conviction	Date
3AN-07-00000 CR	DWLC/S/R/L ²	00/00/2009
3AN-09-00000 CR	Theft by Deception	00/00/2009
3AN-13-00000 CR	Theft by Shoplifting	00/00/2013

Ms. T was incarcerated from June 28, 2013, to serve her sentence resulting from her May 16, 2013 misdemeanor conviction in Case No. 3AN-00-00000 CR. She was released on July 1, 2013.

III. Discussion

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

¹ Ms. T had an additional criminal charge in 2013, Case No. 3AN-13-00000 CR, which was dismissed. It does not constitute a conviction.

² Drive While License Canc/Susp/Revoked/Limited (DWLC/S/R/L).

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.”³ The statute counts prior convictions for criminal offenses committed on or after January 1, 1997.⁴

The qualifying year for a 2014 dividend was 2013.⁵ Ms. T has two misdemeanor convictions which predate 2013, which were offenses that were committed after January 1, 1997. She then received a third misdemeanor criminal conviction in 2013, for which she was incarcerated in 2013. Her incarceration in 2013, the qualifying year for the 2014 dividend, for her third misdemeanor criminal conviction, disqualified her from receiving a 2014 dividend.

As the individual challenging the division’s decision, it is Ms. T’s burden to establish that it is more likely than not that she is eligible for a 2014 PFD.⁶ Ms. T has failed to meet her burden. The evidence is clear that her incarceration in 2013 disqualified her from receiving a 2014 dividend.

IV. Conclusion

Ms. T is not eligible to receive a 2014 PFD because she was incarcerated during the qualifying year (2013) as a result of her third misdemeanor conviction since January 1, 1997. The decision of the division is AFFIRMED.

DATED this 30th day of January, 2015.

By: Signed _____
Lawrence A. Pederson
Administrative Law Judge

³ AS 43.23.005(d). The two definitions from Title 11 simply specify that misdemeanors are crimes for which sentences greater than one year cannot be imposed, while felonies are crimes for which such sentences can be imposed.

⁴ Sec. 6 ch. 46 SLA 1996.

⁵ AS 43.23.095(6).

⁶ 15 AAC 05.030(h).

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 26th day of February, 2015.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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