

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

In the Matter of )  
 )  
 F L. J, JR. )  
 )  
 2014 Permanent Fund Dividend ) OAH No. 14-2005-PFD  
 Agency No. 2014-062-8249

**DECISION**

**I. Introduction**

F J, Jr.'s application for a 2014 permanent fund dividend (PFD) was denied because he was incarcerated during the qualifying year, 2013, as a result of his third misdemeanor conviction. Following an unsuccessful informal appeal, Mr. J requested a formal hearing by correspondence.

The Permanent Fund Division's (Division) position statement was received on December 11, 2014. Mr. J did not submit any documents or written explanation to supplement his formal hearing request, nor did he submit a written reply to the Division's position statement.

Because Mr. J was incarcerated in the qualifying year, 2013, as a result of a disqualifying condition, he was not eligible to receive the 2014 PFD.

**II. Facts**

Mr. J timely applied for a 2014 PFD. The Division has raised no issue regarding Mr. J's eligibility apart from his incarceration during the qualifying year, 2013.

Mr. J has the following misdemeanor criminal convictions for conduct that occurred after December 31, 1996:

<u>Case No.</u>	<u>Conviction Date</u>
3AN-03-00000 CR	00/00/2003
3AN-07-00000 CR	00/00/2007
3AN-11-00000 CR	00/00/2012 <sup>1</sup>

---

<sup>1</sup> It must be noted that the record does not contain any mention of the 2007 criminal conviction until after Mr. J filed his formal appeal. Ex. 6, p. 1. Prior to that, the record filed by the Division only references a 1996 criminal case, the 2003 criminal case, and the 2011 criminal case. See October 1, 2014 Department of Corrections Identification Verification form (Ex. 4, p. 5) and the Division's Informal Appeal Decision (Ex. 4, p. 1). However, because Mr. J was provided with a copy of the Division's exhibits, had the opportunity to respond, and did not, the Division has established the fact of the 2007 criminal conviction.

Mr. J was incarcerated from June 18 – June 24, 2013 to serve a portion of his suspended imprisonment sentence resulting from his May 14, 2012 misdemeanor conviction in Case No. 3AN-11-00000 CR.<sup>2</sup>

### 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 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.”<sup>3</sup> Convictions are only counted for eligibility purposes if they were for crimes committed after December 31, 1996.<sup>4</sup>

The qualifying year for a 2014 dividend was 2013.<sup>5</sup> Mr. J was undeniably incarcerated in 2013, which arose out of a 2012 misdemeanor conviction in Case No. 3AN-11-00000 CR. Mr. J argued that his incarceration should not count because it arose from a 2011 criminal case, for which he had been previously convicted, and was not for a brand new conviction. However, the statute only requires incarceration in the qualifying year arising out of a criminal conviction, when there are at least two other countable prior convictions. It does not require that there be a brand new conviction in the qualifying year. Mr. J has the required two other prior countable convictions, his 2003 and 2007 criminal convictions. His 2013 incarceration, arising out of the conviction in his 2011 criminal case, disqualified him from receiving a 2014 dividend.

As the individual challenging the Division’s decision, it is Mr. J’s burden to establish that it is more likely than not that he is eligible for a 2014 PFD.<sup>6</sup> Mr. J failed to meet his burden.

### IV. Conclusion

Mr. J is not eligible to receive a 2014 PFD. The decision of the division is affirmed.

DATED this 13<sup>th</sup> day of March, 2015.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

---

<sup>2</sup> Ex. 5, p. 5.

<sup>3</sup> 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.

<sup>4</sup> “Convictions for crimes committed before January 1, 1997, may not be considered in determining the number of prior convictions for purposes of applying AS 43.23.005(d)(2)(B).” Sec. 6, ch. 46 SLA 1996.

<sup>5</sup> AS 43.23.095(6).

<sup>6</sup> 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 10<sup>th</sup> day of April, 2015.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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