

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

In the Matter of)	
)	
E D)	OAH No. 15-1229-PFD
)	Agency No. 2015-012-6470
<u>2015 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

E D’s application for a 2015 permanent fund dividend (PFD) was denied because he was incarcerated during the qualifying year, 2014, as a result of a felony conviction. Following an unsuccessful informal appeal, Mr. D requested a formal hearing.

Mr. D’s hearing was held on October 26, 2015. Mr. D represented himself. PFD Specialist Peter Scott represented the PFD Division.

Because Mr. D was incarcerated in the qualifying year, 2014, as a result of a disqualifying condition, he was not eligible to receive the 2015 PFD.

II. Facts

Mr. D timely applied for a 2015 PFD. The Division has raised no issue regarding Mr. D’s eligibility apart from his incarceration during the qualifying year, 2014.

Mr. D was convicted of two felony charges on April 29, 2005, case number 3HO-04-00000CR.¹ He subsequently had a bench warrant issued for a probation violation. He was arrested based upon that bench warrant on May 19, 2014.² He was then incarcerated from May 19 through June 30, 2014. On June 30, 2014, he was released from jail and his probation was reinstated.³ On December 14, 2014, he was released from probation.⁴

III. Discussion

The Alaska legislature has directed that “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 the conviction in this state of a (A) felony.” This includes incarceration for a probation violation when the original sentence was for a felony.⁵

¹ Ex. 6, pp. 5 – 10.

² Ex. 9, pp. 14 – 15.

³ Ex. 9, pp. 4, 10.

⁴ Ex. 9, p. 6.

⁵ *In re K. B.*, OAH No. 13-0235-PFD (Department of Revenue 2013); *In re M. K.*, OAH No. 11-0464-PFD (Department of Revenue 2012).

The qualifying year for a 2015 dividend was 2014.⁶ Mr. D was undeniably incarcerated in 2014, which arose out of a 2005 felony conviction in court case number 3HO-04-00000CR. His 2014 incarceration disqualified him from receiving a 2015 dividend.

As the individual challenging the Division's decision, it is Mr. D's burden to establish that it is more likely than not that he is eligible for a 2015 PFD.⁷ Mr. D failed to meet his burden.

IV. Conclusion

Mr. D is not eligible to receive a 2015 PFD. The decision of the division is affirmed.

DATED this 3rd day of November, 2015.

By: Signed
Lawrence A. Pederson
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 30th day of November, 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.]

⁶ AS 43.23.095(6).

⁷ 15 AAC 05.030(h).