

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

In the Matter of	)	
	)	
D K. U	)	OAH No. 15-1572-PFD
_____	)	Agency No. 2015-052-1829

**DECISION**

**I. Introduction**

This case is the appeal of D U. Mr. U appealed the denial of his application for a 2015 Alaska Permanent Fund Dividend (PFD). Mr. U timely applied for his 2015 PFD. Mr. U's application was denied by the Permanent Fund Dividend Division (Division) because the Alaska Department of Corrections (DOC) records show that Mr. U was incarcerated in 2014 for a felony conviction. Mr. U requested an informal appeal and was again denied. Mr. U then filed a request for a formal hearing by correspondence. The record in this appeal closed on January 28, 2016.

Administrative Law Judge Mark T. Handley was assigned the appeal. PFD Appeals Manager Robert Pearson represented the Division and filed a position paper. Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. U does not qualify for a 2015 dividend. Under AS 43.23.005(d)(2)(A), PFD applicants are disqualified if they are incarcerated during the PFD qualifying year for a felony conviction even if the conviction was for a crime committed before December 31, 1996.

**II. Facts**

The evidence in the record shows that it is more likely than not that in 2014 Mr. U was incarcerated as the result of a felony conviction for a crime committed before December 31, 1996.<sup>1</sup>

Alaska Department of Corrections records show that Mr. U was incarcerated for a Felony conviction in 2014 in case number XXX-00-00000CR.<sup>2</sup> Mr. U is incarcerated after being sentenced in 1987 to serve 99 years for a first degree murder conviction and five years for tampering with evidence.<sup>3</sup> In his request for a formal hearing, Mr. U does not dispute that he was incarcerated as the result of a felony conviction in 2014, but he argues that he is eligible

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<sup>1</sup> Exhibits 8, page 5& 10, page 4.  
<sup>2</sup> Exhibit 8, page 5.  
<sup>3</sup> Exhibit 8, page 10.

because he was convicted in 1986 and the PFD disqualification for incarceration as the result of a felony conviction during the qualifying year only applies to only applies to crimes after 1996.<sup>4</sup>

### III. Discussion

Mr. U did not show that he is eligible for a 2015 PFD. The basis of the Division's determination of ineligibility in this case is governed by AS 43.23.005(d)(2), which states:

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 qualifying year, the individual was sentenced as a result of conviction in this state of a felony;
- (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; 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.

The issue in this appeal is simply whether Mr. U was incarcerated in 2014 for a felony conviction. The evidence in the record shows that he was. Mr. U does not really dispute this. He is making a legal argument. Mr. U incorrectly cites a note added below the relevant statute after AS 43.23.005(d)(2) in a copy of applicable Alaska statutory and regulatory provisions sent to Mr. U by the Division. This note is in parentheses and bold provides: “**(Applies to crimes committed after December 31, 1996).**”<sup>5</sup> This note is not part of the actual statute. It appears to be the Division's editorial notification that AS 43.23.005(d)(2)(B), the disqualification for incarceration for a misdemeanor, only applies to crimes committed after December 31, 1996. This notification is an accurate reflection of the law, but an explanation of why the misdemeanor disqualification only applies to crimes committed after December 31, 1996, is fairly complicated. It is therefore understandable that the Division provided notification in an editorial note. It is unfortunate that Mr. Thomson read this note as being part of the actual statute and misinterpreted it as applying to both AS 43.23.005(d)(2)(A) &(B), rather than just AS 43.23.005(d)(2)(B).

In 1995, only people incarcerated as a result of a felony were ineligible under AS 43.23.005(d). In 1996 the statute was amended to include the disqualification of individuals incarcerated during the PFD qualifying year for a misdemeanor if the individual had a prior

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<sup>4</sup> Exhibit 8, page 2.

<sup>5</sup> Exhibit 8, page 9.

felony conviction or two or more misdemeanor convictions. This legislation included language that provided:

The amendments made by secs. 2 and 3 of this Act apply only to individuals convicted of crimes committed after December 31, 1996. 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).<sup>[6]</sup>

The above language explains that the prior crimes limitation on the misdemeanor incarceration PFD disqualification that is now found in AS 43.23.005(d)(2)(B) includes only prior crimes committed after December 31, 1996. The disqualification for incarceration for a felony during the qualifying year found in AS 43.23.005(d)(2)(A) is not limited to crimes committed after December 31, 1996.

In 2014, the 2015 PFD qualifying year, Mr. U was incarcerated as the result of a felony conviction. Mr. U is disqualified from PFD eligibility under AS 43.23.005(d)(2)(A) even though the crimes that he was incarcerated for were crimes committed before December 31, 1996.

#### **IV. Conclusion**

The Division's decision is upheld. Mr. U is not eligible to receive the 2015 PFD.

DATED this 1<sup>st</sup> day of February, 2016.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>6</sup> 46 SLA 1996, Section 6.

## 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 29<sup>th</sup> day of February, 2016.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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