

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

In the Matter of)	
)	
J O)	OAH No. 16-1349-PFD
_____)	Agency No. 2016-015-3609

DECISION

I. Introduction

J O is not eligible for a 2015 permanent fund dividend under AS 43.23.005(d)(2) because he served time in jail for a misdemeanor in 2015, and he has more than two prior misdemeanor convictions.

II. Facts

J O was convicted of a misdemeanor in 2015.¹ As part of a plea agreement, he was sentenced to, and spent, one day (slightly less than 24 hours) in jail in 2015.² He has several additional misdemeanor convictions on his record dating back to 1997. The record in this matter documents three misdemeanor convictions in 2003, and asserts that there are others.³

Based on these misdemeanor convictions, the Permanent Fund Dividend Division of the Department of Revenue denied Mr. O’s application for a 2016 dividend. After the denial was affirmed in an informal conference, Mr. O appealed the denial. A hearing was held on December 15, 2016.

III. Discussion

Under the law, a person is not eligible for a dividend if the person

- served time in jail for a misdemeanor during the “qualifying year” for that dividend; and
- had two or more prior misdemeanor convictions after December 31, 1996.⁴

Here, the qualifying year for the 2016 dividend was 2015. Mr. O did spend time in jail in 2015. He does have two or more misdemeanor convictions since December 31, 1996. Therefore, the law prohibits his receipt of a 2016 dividend.

Mr. O argues, however, that he spent less than 24 hours in jail for his conviction in 2015. In his view, this slight amount of jail time—pursuant to a plea agreement that he agreed to merely

¹ O testimony; Division Exhibit 6.
² O testimony; Division Exhibit 6.
³ Division Exhibit 6.
⁴ AS 43.23.005(d)(2).

for convenience—does not meet the spirit of the law. He feels like he is being punished twice for a small infraction by being assessed a huge fine far out of proportion to his crime. He requests a ruling that AS 43.23.005(d)(2) does not apply when the jail time is not material.

This decision, however, must follow the law. The law does not provide an exception for jail time that is not material. Therefore, the law requires that Mr. O's dividend be denied. Previous cases involving minimal jail time have reached the same result.⁵

IV. Conclusion

The Division's denial of J O's 2016 permanent fund dividend is affirmed.

DATED this 30th of December, 2016.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Revenue and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 January, 2017.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge

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

⁵ See, e.g., *In re E.M.L.*, OAH No. 13-1735-PFD (Dep't of Rev. 2014).