

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

In the Matter of)	
)	
N L)	OAH No. 16-1515-PFD
_____)	Agency No. 2016-019-8149

DECISION

I. Introduction

N L appealed the denial of his 2016 permanent fund dividend. Mr. L, however, was incarcerated for a felony during some or all of the qualifying year, 2015. Therefore, he is ineligible for a 2016 dividend. The decision denying his application for a 2016 dividend is affirmed.

II. Facts

N L is an Alaska resident. During 2015, however, Mr. L was in jail as a result of a felony conviction.¹

In January 2016, Mr. L applied for the 2016 permanent fund dividend.² His application was denied because he had been in jail for a felony conviction during the qualifying year, 2015.

Mr. L appealed the denial to an informal conference. The denial was affirmed, and Mr. L requested a hearing before the Office of Administrative Hearings. A hearing was scheduled for February 8, 2017, at 1:00 p.m.

Before the date of the hearing, Mr. L filed several pages of argument. He informed this office that he would be released from jail four days before the hearing. He expected to be residing at No Name Facility in Anchorage on the day of the hearing. He would not have a telephone. He provided a detailed explanation for why he believed that his cell phone would not be returned to him in time for the hearing.³

On the day and time of the hearing, I called No Name Facility. No Name Facility affirmed that Mr. L was a resident. He was not, however, in his room or available for a hearing. Later that day, Mr. L called the staff of the Office of Administrative Hearings. A follow up hearing was scheduled for February 9, 2017 at 3:00 p.m. Mr. L provided a telephone number at which he could be reached.

¹ Division Exhibit 6.
² Division Exhibit 1.
³ L filing at 1-4.

A hearing convened on February 9, 2017, at 3:00 p.m. Mr. L's number was called more than once. He did not answer or otherwise appear. The Permanent Fund Dividend Division asked that the case be considered on the record. The record was closed, and the case was considered based on the written filings of the parties.

III. Discussion

Under the law, a person is not eligible for a dividend if, during the qualifying year, the individual was incarcerated as a result of a felony conviction in this state.⁴ Here, the qualifying year for the 2016 dividend was 2015. Mr. L was in jail in 2015. His incarceration was a result of his felony conviction.⁵ Therefore, the law prohibits his receipt of a 2016 dividend.

Mr. L argued in the filing with this office, however, that denying him the 2016 dividend will result in "Extreme Hardship."⁶ He also discusses that the Department of Corrections failed to allow him to make a payment to preserve his storage unit, and that the Department of Corrections had violated the Americans with Disabilities Act.⁷

In his filing with the Department of Revenue, Mr. L asserted that his incarceration during 2016 was due solely to a probation violation that was technical matter. Nobody was victimized.⁸ He also explained that he was under a court order to apply for the dividend every year.⁹

The law, however, does not allow a hardship exception to the prohibition on an incarcerated felon receiving a dividend.¹⁰ In addition, nothing in AS 43.23.005(d)(2)(A) allows the Department to make an exception when the reason for the incarceration was a probation violation or when a judge requires the felon to apply for a dividend.¹¹

This decision must follow the law. I am not permitted to make exceptions to the law. Thus, the fact that matters here is whether Mr. L was incarcerated in 2015 for a felony. An Alaska Department of Corrections official attested that Mr. L was incarcerated from November 18, 2014 to February 4, 2017, as a result of a probation violation for a felony conviction in Case No. 3AN-97-00000CR.¹² The Department also explained that Mr. L "was arrested for a Probation violation, and not just a technical only violation. He was convicted of a third felony PV on

⁴ AS 43.23.005(d)(2)(A).

⁵ Division Exhibits 6, 10.

⁶ L filing at 5 (capitalization in original).

⁷ L filing at 7.

⁸ Division Exhibit 4 at 2.

⁹ *Id.*

¹⁰ AS 43.23.005(d)(2)(A).

¹¹ See *In re MK*, OAH No. 11-0464-PFD at 2 (Dep't of Rev. 2012).

¹² Division Exhibit 6.

4/7/15, and all time was imposed of 18 months.”¹³ Mr. L has not come forward with any evidence to refute this assertion. Although Mr. L asserts that his conviction for the parole violation is under appeal, that does not make him eligible now. If his appeal is successful, however, he may seek relief at the time that his conviction is overturned.¹⁴

IV. Conclusion

Mr. L was incarcerated for a felony in 2015. Therefore, he is ineligible for a 2016 permanent fund dividend. The Division’s denial of his application for a 2016 dividend is affirmed.

DATED this 29th day of March, 2017.

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 April, 2017.

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

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

¹³ Division Exhibit 10.

¹⁴ 15 AAC 23.183(b); *In re KX*, OAH No. 13-1699-PFD (Dep’t of Rev. 2014).