

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

In the Matter of)	
)	
K J)	
)	
<u>2016 Permanent Fund Dividend</u>)	OAH No. 17-0051-PFD Agency No. 2016-018-2881

DECISION

I. Introduction

K J’s application for a 2016 permanent fund dividend (PFD) was denied because he was incarcerated during the qualifying year, 2015, due to a felony conviction. Following an unsuccessful informal appeal, Mr. J requested a formal hearing by correspondence.

The deadline for the parties to submit a written statement or response was March 28, 2017. The Permanent Fund Dividend Division’s (Division) position statement was timely received on March 13, 2017. Mr. J did not submit any initial statement, nor did he provide a response to the Division’s position statement.

The evidence shows that Mr. J was an incarcerated felon in the qualifying year, 2015. He is therefore not eligible to receive the 2016 PFD. The fact that Mr. J currently has an appeal pending in the Alaska Court of Appeals does not change this result. If Mr. J prevails on his current case with the Court of Appeals and his criminal conviction is vacated or reversed, he has the option to filing a delayed appeal, pursuant to 15 AAC 23.183(b).

II. Facts

Mr. J was arrested in 2008 and was subsequently convicted of multiple felony charges in 2009. As a result of that conviction, he has been continuously incarcerated since 2009, including the entirety of calendar year 2015.¹

Mr. J timely applied for a 2016 PFD.² The Division initially denied his application based upon his being an incarcerated felon during 2015. Mr. J informally appealed the denial. The Division again denied his application. The Division has raised no issue regarding Mr. J’s eligibility apart from his incarceration during the qualifying year, 2015.³

¹ Ex. 2, p. 3;.Ex. 5;
² Ex. 1.
³ Exs. 3 – 6.

Mr. J has appealed his criminal conviction to the Alaska Court of Appeals, Case No. A00000. As of the date of this decision, that appeal is still unresolved.

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.”⁴ That prohibition remains in effect, even when the applicant has a pending appeal of his conviction.⁵

The qualifying year for a 2016 dividend was 2015.⁶ Mr. J was undeniably incarcerated in 2015, which arose out of a 2009 felony conviction. His 2015 incarceration currently disqualifies him from receiving a 2016 dividend, because his appeal of that conviction is still pending. If Mr. J’s disqualifying criminal conviction is reversed or vacated on appeal, then he may file a subsequent appeal of his denied PFD application, as long as that appeal is filed within 60 days of the date his disqualifying conviction is vacated or reversed.⁷

IV. Conclusion

Mr. J is currently not eligible to receive a 2015 PFD. The decision of the division is affirmed. If, however, his underlying criminal conviction is reversed or vacated, he may renew his appeal under 15 AAC 23.183(b).

DATED this 7th day of April, 2017.

By: Signed _____
Lawrence A. Pederson
Administrative Law Judge

⁴ AS 43.23.005(d).

⁵ *In the Matter of K. X.*, OAH Case No. 13-1699-PFD (Commissioner of Revenue 2014). This decision is available online at http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD131699.pdf?_ga=1.35451881.931794347.1416513843.

⁶ AS 43.23.095(6).

⁷ *Id.*; 15 AAC 23.183(b).

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 2nd day of May, 2017.

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

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