

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

In the Matter of:)	
)	
E O)	
)	OAH No. 17-0587-PFD
<u>2016 Permanent Fund Dividend</u>)	Agency No. 2016-019-8266

DECISION

I. Introduction

The Permanent Fund Dividend Division denied E O's 2016 Permanent Fund Dividend application. Mr. O requested a formal hearing by written correspondence.

Mr. O was incarcerated during 2015, the qualifying year for the 2016 dividend, as a result of a felony conviction. Therefore, he is not eligible to receive a 2016 dividend.

II. Facts

Mr. O applied for a 2016 permanent fund dividend. The division denied the application for failure to provide requested information.¹ Mr. O filed a request for informal appeal.² The denial was overturned and remanded to the division's eligibility section, because the division found that there were other issues in Mr. O's case.³

On remand, the division issued a new notice of denial concluding that Mr. O was not eligible for the 2016 dividend because he was incarcerated as a result of a felony during 2015, citing information received from the Alaska Department of Corrections.⁴ Mr. O filed a second request for informal appeal.⁵ The division upheld the decision, based on the information from the Department of Corrections that Mr. O was incarcerated during 2015.⁶

There is no dispute that Mr. O was convicted of a felony, and incarcerated as a result of that felony conviction.⁷ Mr. O admits that he is incarcerated.⁸

¹ Exhibit 5 at 1.
² Exhibit 6.
³ Exhibit 11.
⁴ Exhibit 12.
⁵ Exhibit 13.
⁶ Exhibit 14 at 1 – 2.
⁷ Exhibit 10.
⁸ Exhibit 15 at 2.

On September 3, 2010, the Court of Appeals for the State of Alaska ordered Mr. O to pay part of the cost of a court-appointed attorney. The order provided in part: “You shall apply for an Alaska Permanent Fund dividend every year in which you are an Alaska resident eligible for a dividend until judgment is paid in full.”⁹ On August 1, 2016, the court issued an order and writ of execution, ordering Mr. O to pay \$1,500 and to “apply for permanent fund dividends every year in which appellant is an Alaska resident eligible for a dividend until the judgment is paid in full.”¹⁰

The parties were notified of the hearing by correspondence and given an opportunity to submit additional argument or evidence. The division submitted a position statement and exhibits. Mr. O did not submit additional arguments or documents in support of his case, nor did he submit a response to the division’s filings.

III. Discussion

Mr. O argues based on the court of appeals orders and writ of execution that he can apply for the Permanent Fund Dividend, and receive that portion of his dividend not used for paying the court ordered costs.¹¹ Mr. O is free to apply for the permanent fund dividend. However, he is clearly ineligible to receive a dividend for years in which he is incarcerated for at least part of the qualifying year.

The division must apply the statutes and regulations as written. Alaska Statute 43.23.005(d) reads:

. . . an individual is not eligible for a permanent fund dividend for a dividend year when

. . .

(2) during all or part of the calendar year immediately preceding that dividend 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 two or more prior crimes as defined in AS 11.81.990.¹²

⁹ Exhibit 1 at 4, citing Appellate Rule 209(b)(2).

¹⁰ Exhibit 7 at 1.

¹¹ Exhibit 15 at 4.

¹² AS 43.23.005(d)(2).

Although the orders from the Court of Appeals require Mr. O to apply for the permanent fund dividend “every year in which you are an Alaska resident *eligible for a dividend*,” the orders do not change the permanent fund dividend program’s eligibility criteria.

Mr. O was not eligible for a 2016 permanent fund dividend because he was incarcerated as a result of a felony conviction in 2015.

IV. Conclusion

Mr. O was incarcerated in 2015 as a result of a felony conviction. Therefore, Mr. O was not eligible for a 2016 permanent fund dividend. The division’s denial of Mr. O’s 2016 PFD application is affirmed.

DATED: August 17, 2017.

Signed _____
Kathryn L. Kurtz
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 12th day of September, 2017.

By: *Signed* _____
Signature
Kathryn Kurtz _____
Name
Administrative Law Judge
Title

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