

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

In the Matter of	)	
	)	
F Q	)	
	)	OAH No. 17-1100-PFD
<u>2017 Permanent Fund Dividend</u>	)	Agency No. 2017-047-1044

**DECISION**

**I. Introduction**

F Q's application for a 2017 Permanent Fund Dividend (PFD) was denied because he was incarcerated during 2016, the qualifying year for the 2017 PFD, due to a felony conviction. Following an unsuccessful informal appeal, Mr. Q requested a formal hearing by correspondence.

The deadline for the parties to submit any additional documents or explanation for the ALJ to consider was November 30, 2017. The Permanent Fund Dividend Division's (Division) position statement was timely served on November 29, 2017. Mr. Q did not submit any additional documents or an explanation nor did he provide a response to the Division's position statement.<sup>1</sup>

The evidence shows that Mr. Q was an incarcerated felon during all of 2016, the qualifying year. Under AS 43.223.005(d)(2)(A), PFD applicants are disqualified if they are incarcerated during the PFD qualifying year for a felony conviction. Thus, Mr. Q is not eligible to receive the 2017 PFD. The fact that Mr. Q currently has an appeal pending in the Alaska Court of Appeals does not change this result. If Mr. Q 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. Q was convicted of a felony in Case No. 3AN-91-00000-CR on June 00, 1998.<sup>2</sup> As a result of that conviction, he has been continuously incarcerated since 2002, including the entirety of calendar year 2016.<sup>3</sup>

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<sup>1</sup> The parties had until December 14, 2017 to submit a written response to any materials submitted by the other side.

<sup>2</sup> Exh. 4 & Exh, 5, p. 1.

<sup>3</sup> Exh. 3, p. 2; Exh. 3.

Mr. Q timely applied for a 2017 PFD.<sup>4</sup> The Division initially denied his application based upon his being an incarcerated felon during 2016.<sup>5</sup> Mr. Q informally appealed the denial.<sup>6</sup> The Division again denied his application.<sup>7</sup> The Division has raised no issue regarding Mr. Q's eligibility apart from his incarceration during the qualifying year, 2016.<sup>8</sup> Mr. Q timely filed a formal appeal on October 19, 2017.<sup>9</sup>

Mr. Q 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 basis of the Division's determination of Mr. Q's ineligibility in this case is governed by AS 43.23.005(d)(2) which states, in pertinent part, that:

Notwithstanding the provisions of (a)-(c) of this section, 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; or

(B) misdemeanor if the individual has been convicted of a

(1) a prior felony as defined in AS 11.81.900; or

(2) two or more prior misdemeanors as defined in AS 11.81.900.

Mr. Q does not dispute that he was incarcerated in 2016 but instead argues that this statutory provision only applies to crimes committed after December 31, 1996.<sup>10</sup> However, the PFD 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.<sup>11</sup> Furthermore,

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<sup>4</sup> Ex. 1, p. 1.

<sup>5</sup> Exh. 2; *see also* Exh. 1, p. 4.

<sup>6</sup> Exh. 3, p. 1.

<sup>7</sup> Exh. 5.

<sup>8</sup> Exh. 2, p. 1 & Exh. 5.

<sup>9</sup> Exh. 6, p. 1. In his formal appeal, Mr. Q stated that he was appealing PFD years 2010-2017 because he "should have been released [from jail] in 2010." *See* Exh. 6, p. 2. However, the record shows that 2017 is the first year that Mr. Q has applied for a PFD since 1994. *See* Exh. 1, p. 3.

<sup>10</sup> Exh. 3, p. 2.

<sup>11</sup> *See In the Matter of D K. U*, OAH No. 15-1572-PFD (explaining that it is only the misdemeanor disqualification which applies to crimes committed after December 31, 1996, not the felony disqualification), which is located at Exh. 7, pp. 1-4. Mr. Q's misunderstanding of the statute appears to arise from an editorial note that is not part of the actual statute. That note clarifies that the *misdemeanor disqualification* found in AS 43.23.005(d)(2)(B) only applies to crimes committed after December 31, 1996. *See* Exh. 7, at pp. 2-3.

this disqualification remains in effect even when the applicant has a pending appeal of his conviction.<sup>12</sup>

The qualifying year for a 2017 PFD was 2016.<sup>13</sup> Mr. Q was incarcerated in 2016, as a result of his 1998 felony conviction. His 2016 incarceration currently disqualifies him from receiving a 2017 PFD, even though his appeal of that conviction is still pending. If Mr. Q'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.<sup>14</sup>

#### **IV. Conclusion**

Mr. Q currently is not eligible to receive a 2016 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 16<sup>th</sup> day of January, 2018.

By: Signed  
Kathleen A. Frederick  
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 14th day of February, 2018.

By: Signed  
Signature  
Kathleen A. Frederick  
Name  
Administrative Law Judge  
Title

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

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<sup>12</sup> *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](http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD131699.pdf?_ga=1.35451881.931794347.1416513843).

<sup>13</sup> AS 43.23.095(6).

<sup>14</sup> *Id.*; 15 AAC 23.183(b).