

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

In the Matter of	)	
	)	
B B	)	OAH No. 18-0005-PFD
_____	)	Agency No. 2017-017-8529

**DECISION**

**I. Introduction**

This matter is before the Office of Administrative Hearings on B B’s appeal of the Permanent Fund Dividend Division’s (Division) denial of his application for a 2017 permanent fund dividend (PFD). The Division originally denied Mr. B’s 2017 PFD application because it was incomplete and Mr. B had not responded to the Division’s request for further information. The denial was upheld on informal appeal on the ground that Mr. B was incarcerated during 2016 for a misdemeanor conviction after having been convicted of two prior misdemeanors in Alaska after 1997. Mr. B appealed and filed a request for a formal hearing.

A formal hearing was held on February 5, 2018. Mr. B appeared telephonically and Bethany Thorsteinson represented the Division. Having heard the evidence and statements of both parties and reviewed the record, I find that Mr. B is not eligible for the 2017 PFD due to his incarceration and past criminal convictions. The decision of the Division is therefore affirmed.

**II. Facts**

This appeal is governed by AS 43.23.005(d)(B)(ii), and the facts relevant to the application of that statute are not in dispute. The following recitation is based on the record and exhibits appended to the Division’s referral and formal hearing position statement and testimony provided by Mr. B at the hearing.

Mr. B is a long time Alaskan who lives in No Name City, Alaska. He received PFDs in 1987 through 2012 and 2015. He did not file for a 2016 PFD.<sup>1</sup> Mr. B filed for the 2017 by mail on January 11, 2017. He also filed a duplicate application by mail on March 6, 2017. Because the latter application was a duplicate, the Division relied on the January 11,

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<sup>1</sup> Exhibit 9.

2017 application.<sup>2</sup> On that application, Mr. B correctly marked that he did not receive a 2016 PFD.<sup>3</sup> The Division later mailed Mr. B a Request for Information asking Mr. B to complete an Adult Supplemental Schedule and 2017 Adult Prior Year Non-Filer form. On June 23, 2017, the Division denied Mr. B's application because of incomplete information.<sup>4</sup>

Mr. B filed a timely request for informal appeal on June 29, 2017. This request, and Mr. B's further answers did not clear up all of the questions regarding his residency in Alaska in the 2016 qualifying year.<sup>5</sup>

After the informal appeal was filed, the Division received notice from the Department of Corrections that Mr. B was incarcerated in 2016 for a misdemeanor conviction, case no. 4XX-16-00000CR after two prior misdemeanor convictions in case no. 4XX-12-00000CR on May 0, 2012 and case no. 4XX-07-00000CR on February 0, 2007. The Division upheld the denial of Mr. B's 2017 application on the grounds that he was ineligible under AS 43.23.005(d)(2)(B)(ii). The Division's letter notifying Mr. B of its decision, the Division stated that to overcome the denial, Mr. B would need to show that he did not have the disqualifying convictions and that he would also have to provide all of the missing information on the 2017 Adult Supplemental Schedule and Adult Prior Year Non-Filer forms.<sup>6</sup>

Between December 7, 2017 and December 22, 2017, Mr. B provided some of the requested information. He also filed a valid request for a formal hearing.<sup>7</sup>

At the hearing Mr. B answered the Division's questions concerning his residency in Alaska. Through his responses to Ms. Thorsteinson's questions, all of his no answers to the question 7 on the 2017 Adult Supplemental Schedule were changed to yes. This cleared up the Division's questions concerning whether Mr. B met the residency requirement for the 2017 PFD.<sup>8</sup> However, Mr. B also acknowledged his misdemeanor conviction, and these provide the factual basis for his ineligibility for the 2017 PFD.

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 9.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibits 5 and 6.

<sup>7</sup> Exhibit 8.

<sup>8</sup> Testimony of Mr. B at the hearing and statements of Ms. Thorsteinson.

### III. Discussion

This case is governed by AS 43.23.005(d)(2)(B)(ii), which provides:

(d) Notwithstanding the provisions of (a) – (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

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(2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a

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(B) misdemeanor if the individual has been convicted of

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(ii) two of more prior misdemeanors as defined in AS 11.81.900.

This section applies to convictions after December 31, 1996.

According to the records provided by the Department of Corrections, Mr. B was incarcerated from March 24, 2016 to October 10, 2016. Thus, he was incarcerated during all or part of 2016, the qualifying year for the 2017 PFD.<sup>9</sup> The Department of Corrections Verification Form also identified Mr. B as having two prior misdemeanor convictions: case no. 4XX-12-00000CR May 0, 2012 and case no. 4XX-07-00000CR February 0, 2007. Thus, Mr. B had two or more prior misdemeanors as defined in AS 11.81.900.<sup>10</sup>

The person appealing the denial of a PFD application has the burden of proving by a preponderance of the evidence that the Division's denial was incorrect.<sup>11</sup> At the hearing Mr. B did not disagree that he had these convictions. Therefore, the Division's evidence established that he was not eligible to receive the 2017 PFD under the law as set forth in AS 43.23.005(d)(2)(B)(ii) set forth above.

Mr. B's testimony at the hearing, however, did clear up the confusion about his residency in Alaska during 2016. Therefore, if he is not ineligible because of future incarceration or other disqualifying action, he may be eligible for future PFD's.

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<sup>9</sup> Exhibit 5 p. 5, AS 43.23.005(d)(2)(B).

<sup>10</sup> AS 43.23.005(d)(2)(B)(ii).

<sup>11</sup> 15 AAC 05.030(h).

**IV. Conclusion**

For the above reasons, the decision of the Division to deny the application of B B for the 2017 PFD is AFFIRMED.

Dated: February 8, 2018

*Signed* \_\_\_\_\_  
Karen L. Loeffler  
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 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 6th day of March, 2018.

By: *Signed* \_\_\_\_\_  
Signature  
Karen L. Loeffler \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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