

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

In the Matter of)	
)	
Q N)	
)	OAH No. 18-0118-PFD
<u>2017 Permanent Fund Dividend</u>)	Agency No. 2017-005-1141

DECISION

I. Introduction

Q N’s application for a 2017 permanent fund dividend (PFD) was denied because she was incarcerated during the qualifying year, 2016, when she had either a prior felony conviction or two or more prior misdemeanor convictions. Following an unsuccessful informal appeal, Ms. N requested a formal appeal by correspondence. The record in this case closed on March 15, 2018.

Because Ms. N was incarcerated in the qualifying year, 2016, due to a misdemeanor conviction, when she had also had two or more prior misdemeanor convictions, she is not eligible to receive the 2017 PFD.

II. Facts

Ms. N timely applied for a 2017 PFD. The division has raised no issue regarding Ms. N’s eligibility apart from her incarceration during the qualifying year, 2016.

Ms. N had a misdemeanor criminal conviction for driving under the influence in 2016, Case No. 3PA-16-00000CR. The offense date was 00/00/2016, and she was convicted in that case after a guilty plea on 00/00/2016. She was incarcerated due to that conviction in 2016, and released on 00/00/2016.¹ In addition, she has multiple misdemeanor criminal convictions which predate the conviction in Case No. 3PA-16-00000CR, which include:²

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¹ Ex. 3, pp. 3 – 4; Ex. 9, p. 2.

² Ms. N has 10 misdemeanor convictions in addition to Case No. 3PA-16-00000CR. *See* Ex. 9, p. 2. The undersigned takes official notice of the Alaska State Court System website, as allowed under 2 AAC 64.300, and upon review of “Courtview” determined that there are multiple criminal convictions for another individual also named Q S N; she has a different birthdate from the Q S N who is the party in this case. The criminal cases listed in this decision and relied upon by the Division are all for the Q S N with a birthdate of 00/00/1966, who is the party in this case.

<u>Case No.</u>	<u>Conviction Date</u>
3PA-15-00000CR	00/00/2016
3PA-14-00000CR	00/00/2015
3PA-11-00000CR	00/00/2012
3PA-11-00000CR	00/00/2012

III. Discussion

The Alaska legislature has directed that “an individual is not eligible for a permanent fund dividend for a dividend year when . . . during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a . . . misdemeanor if the individual has been convicted of . . . (i) a prior felony as defined in AS 11.81.900; or (ii) two or more prior misdemeanors as defined in AS 11.81.900.”³ The statute counts prior convictions for criminal offenses committed on or after January 1, 1997.⁴

Ms. N’s informal appeal request points out, as do the emails which she submitted on February 28, 2018, that the 2016 conviction was for a misdemeanor, not a felony, and that she served a flat time sentence.⁵ She therefore presents an argument that imprisonment for a misdemeanor does not count. However, the statute is clear that incarceration for a conviction of a misdemeanor during the qualifying year counts if the PFD applicant also has either a prior felony conviction or two or more prior misdemeanor convictions.⁶

The qualifying year for a 2017 dividend was 2016.⁷ Ms. N has multiple misdemeanor convictions which predate 2016, which were for offenses that were committed after January 1, 1997. She then received a misdemeanor criminal conviction in 2016, for which she was incarcerated in 2016. Her incarceration in 2016, the qualifying year for the 2017 dividend, disqualified her from receiving a 2017 dividend.

As the individual challenging the division’s decision, it is Ms. N’s burden to establish that it is more likely than not that she is eligible for a 2017 PFD.⁸ Ms. N has failed to meet her

³ AS 43.23.005(d). The two definitions from Title 11 simply specify that misdemeanors are crimes for which sentences greater than one year cannot be imposed, while felonies are crimes for which such sentences can be imposed.

⁴ Sec. 6 ch. 46 SLA 1996.

⁵ Ex. 3, p. 2; emails sent on February 2, 2018.

⁶ AS 43.23.005(d).

⁷ AS 43.23.095(6).

⁸ 15 AAC 05.030(h).

burden. The evidence is clear that her incarceration in 2016 disqualified her from receiving a 2017 dividend.

IV. Conclusion

Ms. N is not eligible to receive a 2017 PFD because she was incarcerated during the qualifying year (2016) because she has two or more prior misdemeanor convictions since January 1, 1997. The decision of the division is AFFIRMED.

DATED this 19th day of March, 2018.

By: Signed
Lawrence A. Pederson
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 April, 2018.

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

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]