

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

In the Matter of: )  
 )  
E.N. )  
 ) OAH No. 22-0243-PFD  
 ) Agency No. 2021-000-4029  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The Permanent Fund Dividend Division denied E.N.’s application for a 2021 Alaska Permanent Fund Dividend (PFD) because he was incarcerated for a misdemeanor during the 2020 qualifying year, after having been convicted of two or more prior misdemeanors. Following an unsuccessful informal appeal, E.N. requested a formal hearing. A hearing was held on April 21, 2022.

The Division’s denial of E.N.’s application is affirmed because he did indeed have an incarceration during the calendar year, which rendered him ineligible for a dividend.

**II. Facts**

E.N. was arrested in 2018 for several misdemeanor offenses, including driving under the influence (DUI).<sup>1</sup> He was accepted into the Therapeutic Court (TC) in 2019 and was ordered to enter into and follow a treatment plan.<sup>2</sup> If he completed the plan successfully, his case would be dismissed.<sup>3</sup> If not, he would be sentenced to 130 days in jail with 100 days suspended.<sup>4</sup>

In June of 2020, the court determined that E.N. had failed to successfully meet all requirements of the treatment plan, and he was removed from the TC.<sup>5</sup> On 00/00/2020, he was convicted of the misdemeanor DUI charge and sentenced to 130 days in jail, with 100 days suspended.<sup>6</sup> After being credited time for “good behavior” and time served for various infractions of his treatment plan, E.N. served nine days in jail in 2020.<sup>7</sup>

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<sup>1</sup> 100-00-00000CR. Ex. 10, pp. 1-4.  
<sup>2</sup> Ex. 10, pp. 13-16. E.N.’s treatment plan also applied to two other cases: Case Nos. 100-00-00000CR and 100-00-00000CR.  
<sup>3</sup> Ex. 10, p. 15.  
<sup>4</sup> Ex. 10, p. 15.  
<sup>5</sup> Ex. 10, pp. 10 and 45-46.  
<sup>6</sup> Ex. 10, pp. 50-51.  
<sup>7</sup> Ex. 12.

In addition to his 2020 conviction, E.N. has multiple prior misdemeanor convictions, including convictions in 2012 and 2014.<sup>8</sup>

In his appeal, E.N. testified that he was held in custody on two occasions while he was in the TC: in January of 2020, after he missed a meeting that he claimed had been rescheduled without him being notified, and in March of 2020, after he relapsed.<sup>9</sup> He questioned whether his time in custody pursuant to the temporary orders could be construed as incarceration that disqualified him for a 2021 dividend. Further, he pointed out that the DUI occurred in 2018; he had no new misdemeanors in 2020. He did not dispute that he was eventually removed from the TC in June of 2020,<sup>10</sup> that he served jail time in 2022, or that he had misdemeanors that predated the 2018 case.

### 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 a conviction in this state of a . . . misdemeanor if the individual has been convicted of . . . two or more prior misdemeanors as defined in AS 11.81.900.<sup>11</sup> Incarceration is defined as “confine[ment] in a facility . . . under a court order for a conviction to restrain an individual’s movement or freedom” including in a prison or jail.<sup>12</sup>

The qualifying year for a 2021 PFD was 2020. E.N. was convicted of at least two misdemeanors before that year. Therefore, if he was incarcerated in 2020 as result of a misdemeanor conviction, he would not be eligible for a dividend.

E.N. was convicted of DUI in 2020. As a consequence of the conviction, he spent nine days in jail in 2020. Because jail time constitutes incarceration, he was clearly incarcerated in 2020 as a result of the conviction, which disqualified him for a 2021 PFD. Thus, it is not necessary to decide whether the time he spent in custody in January and March of 2020 pursuant to temporary orders of the court prior to his conviction constituted incarceration. It is also

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<sup>8</sup> Exs. 11 and 12.

<sup>9</sup> Ex. 8, p. 2; Ex. 10, pp. 10 and 48.

<sup>10</sup> E.N. claimed the judge kicked him out of TC because she wanted to make an example of him after one of his peers got a DUI the day after getting out of TC.

<sup>11</sup> AS 43.005(d). The statute counts prior convictions for misdemeanors committed on or after January 1, 1997. Sec. 6, ch. 46, SLA 1996 (quoted in editor’s note to AS 43.23.005).

<sup>12</sup> 15 AAC 23.993(a)(15),

immaterial that the arrest in the case occurred in 2018, because his eligibility for a PFD turns on whether the incarceration, not the arrest, occurred in 2020.

#### **IV. Conclusion**

E.N. was incarcerated as a result of a misdemeanor conviction in 2020 after having been convicted of at least two prior misdemeanors. The Division's denial of E.N.'s 2021 PFD application is AFFIRMED.

Dated: May 11, 2022

Signed \_\_\_\_\_  
Lisa M. Toussaint  
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 8<sup>th</sup> day of June, 2022.

By: Signed \_\_\_\_\_  
Signature  
Lisa M. Toussaint \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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