

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

In the Matter of:)	
)	
K.M.)	
)	OAH No. 22-0162-PFD
_____)	Agency No. 2021-066-9940

DECISION

I. Introduction

The Permanent Fund Dividend Division denied K.M.’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. K.M. appealed and requested a formal hearing. Because electronic monitoring constitutes incarceration, the Division’s denial is affirmed.

II. Facts

The following facts are established by a preponderance of the evidence in the record.

K.M. was convicted of misdemeanors in 2005 and 2014.¹ More recently, he was convicted of a misdemeanor on 00/00/2020 for driving under the influence (DUI).² He was sentenced to 180 days of jail/monitoring with 120 days suspended.³ He reported to the Electronic Monitoring Program on 00/00/2020 and remained on electronic monitoring through 00/00/2020.⁴

The Division denied K.M.’s application for a 2021 PFD on the grounds that his incarceration in 2020 for his misdemeanor conviction that year and his two prior misdemeanors rendered him ineligible under AS 43.23.005(d).⁵ K.M. filed an informal appeal, but the Division upheld the denial.⁶ K.M. then filed a formal appeal, stating, “I have never been convicted of a felony. I was not incarcerated – 30-day ankle monitor at no cost to state, at my own expense.”⁷ He requested a hearing by correspondence, meaning an oral hearing would not be held, but each

¹ The 2005 conviction was in Case. No. 3PA-00-00000CR, and 2014 conviction was in Case No. 3AN-00-00000CR. Ex. 4.

² Case No. 3PA-00-00000CR. Exs. 4, 8, and 9.

³ Ex. 9. K.M. was also required to pay an “imprisonment fee” of \$2,000.00 for a third or subsequent offense.

⁴ Exs. 4 and 9.

⁵ Ex. 2.

⁶ Exs. 3 and 5.

⁷ Ex. Ex. 6.

party could file written arguments. K.M. was given until April 25, 2022 to submit a written argument, but he did not file any documents.

III. Discussion

This case is governed by AS 43.23.005(d)(2)(B)(ii), which states in relevant part:

(d) . . . 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

(B) misdemeanor if the individual has been convicted of

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

The qualifying year for a 2021 PFD was 2020.⁸ K.M. had been convicted of two misdemeanors before that year. Therefore, if he was incarcerated during all or a portion of 2020 as result of his 2020 misdemeanor conviction, he would not be eligible for a dividend. He served 37 days on ankle monitoring in 2020 for his misdemeanor conviction that year.

The legal question presented is whether time served on ankle monitoring constitutes incarceration. This question is answered by the Division’s regulation at 15 AAC 23.993(a)(15), which defines incarceration broadly:

(15) “incarcerated” means confined in a facility or setting under a court order for a conviction to restrain an individual’s movement and freedom, including a prison, jail, other penal institution, half-way house, hospital, medical facility, treatment facility, or a **furlough to a non-penal setting monitored by an electronic device for the purpose of monitoring the individual’s movements.**

Because this definition includes electronic monitoring, K.M. was indeed incarcerated when he served time on ankle monitoring during 2020 for his misdemeanor conviction that year. Coupled with his two prior misdemeanors, his incarceration in 2020 disqualifies him from a 2021 PFD.

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⁸ AS 43.23.095(6).

IV. Conclusion

The Division’s denial of K.M.’s 2021 PFD application is affirmed.

Dated: April 29, 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 27th day of May, 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.]