

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

In the Matter of )

S.I. )

) OAH No. 21-2395-PFD

) Agency No. 2021-023-2077

**DECISION**

**I. Introduction**

S.I.'s application for a 2021 Permanent Fund Dividend (PFD) was denied because the PFD Division determined he had been incarcerated during the qualifying year under circumstances that would render him ineligible. Following an unsuccessful informal appeal, Mr. Hernandez requested a formal hearing by correspondence before this tribunal.

The Division's denial of I's application is affirmed because Mr. I was incarcerated during the qualifying year of 2020 for a felony conviction. This disqualifies him from the 2021 dividend.

**II. Facts**

S.I. timely applied for a 2021 PFD. There are no issues regarding his eligibility apart from his incarceration during the preceding year.

Mr. I was incarcerated for 366 days in 2020 as a result of a felony conviction on December 11, 2019.<sup>1</sup> His sentence runs until 2051, when he will be 89 years old.<sup>2</sup>

After the PFD Division denied his application for a 2021 dividend and held to that position throughout the informal appeal process, Mr. I initiated a formal appeal. He checked the box on the Request for Formal Hearing form indicating a preference for a hearing by written correspondence only.<sup>3</sup>

By notice dated October 15, 2021, Mr. I and the Division were given until November 22, 2021 to send any additional documents or correspondence to the Office of Administrative Hearings for consideration. The Division filed a position statement. Mr. I did not file anything. Mr. I had until December 4, 2021 to respond to the Division's filing, but again filed nothing.

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<sup>1</sup> Exhibit 7, p. 84 (Corrections Identification Verification Form for PC/81 Felony).

<sup>2</sup> *Id.*

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

### 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 . . . felony; . . . .”<sup>4</sup> In enacting this provision, the legislature made the lookback period for prior convictions extend back to January 1, 1997.<sup>5</sup> Mr. I. was convicted more recently than that.

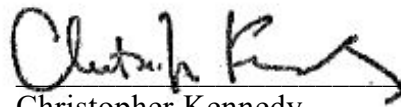
The qualifying year for a 2021 dividend was 2020.<sup>6</sup> Mr. I spent the whole year incarcerated due to his 2019 felony conviction. This makes him ineligible for a 2021 dividend.

Mr. I does not contest any of this history, but in his appeal request he has protested that he was convicted without due process.<sup>7</sup> That argument cannot be considered here; it would have to be taken up through an appeal or other remedy in the court system. A Department of Revenue regulation provides that *if* a court reverses or vacates the conviction that led to a disqualifying incarceration, the applicant can file a new appeal with the Department within 60 days of obtaining that result in the court system.<sup>8</sup> Unless and until that occurs, however, Mr. I is ineligible for the 2021 dividend.

### IV. Conclusion

Mr. I.'s incarceration during 2020 as a result of his felony conviction disqualifies him from a 2021 PFD. Therefore, the decision of the Permanent Fund Dividend Division to deny his application for a 2021 Permanent Fund Dividend is AFFIRMED.

Dated: December 8, 2021



Christopher Kennedy  
Administrative Law Judge

[This decision has been modified and redacted to conform to OAH publication standards.]

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<sup>4</sup> AS 43.23.005(d).  
<sup>5</sup> Sec. 6, ch. 46, SLA 1996.  
<sup>6</sup> AS 43.23.095(6).  
<sup>7</sup> Exhibit 6, p. 2.  
<sup>8</sup> 15 AAC 23.183(b).

## 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 5th day of January, 2022 .

By: 

Christopher Kennedy


Name

Administrative Law Judge

Title

[This decision has been modified and redacted to conform to OAH publication standards.]

**Certificate of Service:** The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals: S.I. (by mail); Peter Scott, PFD Division (by email).

Signature 

Date 01/05/2022