

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

In the Matter of)
)
 S.I.)
) OAH No. 20-0808-PFD
) Agency No. 2020-028-8033
2020 Permanent Fund Dividend)

DECISION

I. Introduction

S.I.'s application for a 2020 permanent fund dividend (PFD) was denied because the Permanent Fund Dividend Division contends he was both sentenced and incarcerated during the 2019 qualifying year as the result of a felony conviction. Following an unsuccessful informal appeal, Mr. I requested a formal appeal by correspondence. The parties' opportunity to submit briefing and evidence closed on November 16, 2020. Because the briefing and evidence establishes that Mr. I was convicted and incarcerated for a felony in 2019, the Division's denial of his 2020 PFD application is AFFIRMED.

II. Facts

Mr. I is a long-time Alaska resident who has applied for PFDs relatively consistently since 1983.¹ He also timely applied for a 2020 PFD.² However, the Division denied his application on the basis that he was sentenced and incarcerated during the 2019 qualifying year based on a felony conviction, thus making him ineligible for a PFD per AS 43.23.005(d).³

As the Division confirmed through verification with the Alaska Department of Corrections, Mr. I's felony sentencing and incarceration arises from Case No. 3AN-[redacted] CR.⁴ In that case, he was criminally charged with felony sexual abuse of a minor. He was ultimately convicted in 2019. It was also confirmed that Mr. I was held and detained in that case prior to his conviction beginning in November 2016. Further, based on his conviction, he did continue and is to remain incarcerated until his scheduled release in 2051.⁵

¹ Ex. 1, p. 5.
² Ex. 1.
³ Ex. 2.
⁴ Ex. 6.
⁵ Ex. 6.

After the Division originally denied Mr. I's 2020 PFD application,⁶ he initiated an informal appeal.⁷ The informal appeal was denied on the same basis as Mr. I's original application.⁸ He then filed a request for a formal hearing by written correspondence.⁹ Both the Division and Mr. I have submitted documentation in support of their respective positions.¹⁰ Mr. I's supporting documentation totals over 70 pages.¹¹ All documentation submitted by both parties has been fully reviewed and considered.

III. Discussion

The Alaska legislature has directed that "an individual is not eligible for a permanent fund dividend for a dividend year when (1) during the qualifying year, the individual was sentenced as a result of a conviction in this state of a felony; (2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a (A) felony. . . ."¹² Accordingly, per the statute, all the Division must demonstrate is that Mr. Hernandez was either sentenced *or* incarcerated for a felony in the qualifying year.¹³ The qualifying year for the 2020 dividend was 2019.¹⁴

Per regulations applying the statutory provisions, "incarcerated" is defined as:

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;¹⁵

AS 43.23.005(d) and 15 AAC 29.993(a)(15) are both consistent in that the "incarceration" must occur *as a result of the conviction*. Although some questions have arisen in the past regarding whether pre-conviction detention is properly construed as 'incarceration' for purposes of AS 43.23.005(d), it is unnecessary to address that question here. That is because in this instance, it is undeniable that Mr. I was incarcerated during the 2019 qualifying year both before

⁶ Ex. 2.

⁷ Ex. 4.

⁸ Ex. 5.

⁹ Ex. 7.

¹⁰ Division Position Statement dated November 2, 2020; Division Exhibits, dated November 2, 2020. Exs. 3, 4, 7 and 8; Correspondence from Mr. I z to the Office of Administrative Hearings, received November 10, 2020.

¹² AS 43.23.005(d).

¹³ AS 43.23.005(d).

¹⁴ AS 43.23.095(6),

¹⁵ 15 AAC 23.993(a)(15).

and after his December 9, 2019 conviction.¹⁶ Further, there is also no denying that Mr. I was also sentenced for a felony during the 2019 qualifying year.¹⁷

In taking issue with the Division's denial of his PFD, Mr. I has made numerous claims. Among other things, he suggests that the State of Alaska is a fictitious entity;¹⁸ he has been unlawfully incarcerated;¹⁹ this administrative proceeding is a 'defilement' and denial of his 'remedy';²⁰ he was incarcerated on false charges and in violation of his constitutional rights;²¹ he is entitled to a lien for collection;²² his underlying criminal conviction is allegedly on appeal based on his claims of fraud and obstruction of justice;²³ he has been denied meaningful participation with the court because of not being allowed by officers at the Goose Creek Correctional Facility to make copies of documents;²⁴ and the Division's representative in this case, Mr. Scott, has committed fraud.²⁵

While Mr. I's claims and documentation were carefully reviewed, it does not change the outcome of this case. While it is understood that Mr. I takes issue with the underlying criminal conviction for which he was sentenced and remains incarcerated, that is not the issue in this proceeding. Instead, the issue here simply concerns whether Mr. I is ineligible for a 2020 PFD due to being incarcerated and sentenced in 2019 as the result of a felony conviction. While it is understood that Mr. I may disagree with his underlying charge, conviction, and sentencing, this is not the forum for those challenges to be made.

Instead, as of right now, all evidence indicates that the incarceration and sentencing occurred as the Division has alleged.

Should Mr. I be successful in overturning his conviction on appeal in the court system, he will be able to file a new appeal of the denial of his PFD. Revenue regulation 15 AAC 23.183(b) creates a mechanism for individuals whose convictions have been reversed to initiate a new appeal of any PFDs they have lost on account of incarceration for the invalid

¹⁶ Ex. 6.

¹⁷ Ex. 6.

¹⁸ Ex. 3, p. 1.

¹⁹ Ex. 3, p. 1.

²⁰ Ex. 3, p. 2.

²¹ Ex. 4, p. 2.

²² Ex. 4, p. 2.

²³ Ex. 7, p. 2.

²⁴ Ex. 8, p. 1.

²⁵ Correspondence from Mr. I to the Office of Administrative Hearings, received November 10, 2020.

conviction. Such an appeal would have to be initiated within 60 days of obtaining the favorable result in court.

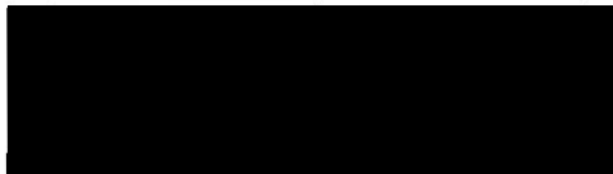
Further, although Mr. I suggests he was somehow denied meaningful participation in this hearing by an inability to make copies, to date, he has submitted over 70 pages of documentation.²⁶ As such, it can hardly be claimed that meaningful participation has not occurred.

Finally, there is also no basis for Mr. I's claim that the Division's representative has acted fraudulently. Contrary to what Mr. I argues, there is no requirement that the Division's representatives be a licensed attorney or bonded in order to participate on the Division's behalf before the Office of Administrative Hearings.²⁷

IV. Conclusion

Mr. I was both incarcerated and sentenced as the result of a felony conviction during the qualifying year. Accordingly, the Division's decision denying his application for a 2020 Permanent Fund Dividend is AFFIRMED.

DATED this 24th day of November, 2020.



Administrative Law Judge

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

²⁶ Exs. 3,4,7 and 8; Correspondence from Mr. I to the Office of Administrative Hearings, received November 10, 2020.

²⁷ 2 AAC 64.160(a).

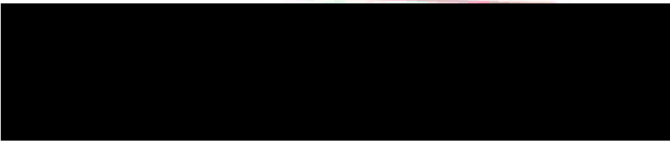
Adoption

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 21st of December, 2020.
Z. Kent Sullivan
Administrative Law Judge

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy was provided to the following individuals:
eg _____
 _____ (by mail)
 _____ (by email)



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