



date be set for the time she had yet to serve.<sup>4</sup> Ms. S. ultimately served the time for her 2012 offenses through a period of electronically monitored home confinement that began on May 4, 2022 and concluded on July 12 of that year.<sup>5</sup> As recognized in past decisions, this type of confinement is the equivalent of time spent in a correctional facility for purposes of AS 43.25.005(d).<sup>6</sup>

Ms. S. submitted a PFD application in March 2023 that the Division denied under AS 43.35.005(d) based on her incarceration in 2022.<sup>7</sup> Ms. S. timely submitted an informal appeal that the Division denied on October 10, 2023.<sup>8</sup> A request for a formal appeal was timely filed by Ms. S. thereafter.

A telephonic hearing was held on December 4, 2023, at which Ms. S. appeared and offered testimony. A Division representative participated in the hearing, and offered nine exhibits which were admitted into evidence. After the hearing, the Division submitted an additional exhibit which showed that Ms. S. had been convicted of felony driving while intoxicated in 2005.<sup>9</sup>

### III. Discussion

In 1996 the Alaska Legislature amended AS 43.23.005 by adding subsection (d)(2), which provided that an individual is not eligible for a permanent fund dividend if, during the qualifying year, the individual: (1) was incarcerated for a misdemeanor offense committed in Alaska; and (2) had been previously convicted of two or more crimes as defined by AS 11.81.900. The legislature additionally specified that crimes committed before January 1, 1997, would not be counted as prior offenses for purposes of this statute.<sup>10</sup>

In 2001 the legislature amended this statute by enacting AS 43.23.005(d)(2)(ii), which made an individual ineligible to receive a PFD if, during the qualifying year, the

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<sup>4</sup> Exhibit 9 at p. 1.

<sup>5</sup> Exhibit 4 at p. 1. While Ms. S. also had a pending probation violation for failing to perform her community work service, that was addressed by converted that obligation into a fine.

<sup>6</sup> *In re B.K.Y.*, OAH No. 08-0657-PFD (Dep't of Revenue 2009); *In re S.O.E. III*, OAH No. 13-010-PFD (Dep't of Revenue 2013).

<sup>7</sup> Exhibits 1 and 5.

<sup>8</sup> Exhibit 5 at pp. 1-2.

<sup>9</sup> Exhibit 10. During the hearing the Division was granted permission to file this exhibit.

<sup>10</sup> 1996 Alaska Laws Ch. 46 (S.B. 232).

individual had been incarcerated for a misdemeanor and had been previously convicted of a felony as defined by AS 11.81.900.<sup>11</sup>

Here, it is undisputed by Ms. S. that she was convicted of two misdemeanor crimes in 2012 for which she served a period of incarceration in 2022. She acknowledges that prior to her 2012 conviction she had been convicted of driving while intoxicated in 1998 and driving with a revoked or suspended license in 2011. The Division has additionally produced evidence showing that Ms. S. was convicted of a felony in 2005. However, Ms. S. argues that it would be unfair to deprive her of a dividend in 2023 on account of offenses she committed in 2012. Ms. S. also describes herself as particularly needful of her dividend due to a series of personal and family hardships.<sup>12</sup>

While recognizing that financial difficulties that can arise from the unexpected loss of a PFD, the fact so many years passed between the date of Ms. S.'s conviction in 2012, and the ultimate service of her sentence in 2022, is entirely attributable to Ms. S.'s decision to ignore a court-imposed remand date and for years thereafter do nothing to address the pending arrest warrant. Additionally, as the Division noted during Ms. S.'s hearing, AS 43.23.005(d)(2)(B) is a mandatory provision that neither the Division nor this tribunal can waive based on an applicant's claim of financial hardship.

#### **IV. Conclusion**

The undisputed facts show that, during the qualifying year of 2022, Ms. S. served a period of incarceration for a misdemeanor offense she committed in 2012 following convictions for other misdemeanor crimes in 1998 and 2011. The evidence additionally shows that Ms. S. was also convicted of a felony crime in 2005. Under the straightforward language of AS 43.23.005(d)(2), the Division's denial of Ms. S.'s 2023 PFD application must accordingly be AFFIRMED.

Dated: December 5, 2023

*Signed*

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Max Garner

Administrative Law Judge

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<sup>11</sup> 2001 Alaska Laws Ch. 92 (S.B. 105).

<sup>12</sup> Ms. S. also questioned whether AS 43.23.005(d)(2) had been enacted prior to her convictions in 2012; as noted herein, however, this provision has been on the books since 1996, with the later amendment in 2001.

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

## **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, 2024.

*Signed* \_\_\_\_\_  
Signature  
Max Garner \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

