

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

In the Matter of)	
)	
D. C.)	OAH No. 24-0621-PFD
)	
<u>2024 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

The Permanent Fund Dividend Division denied D. C.’s application for a 2024 permanent fund dividend (PFD) because she was incarcerated for a misdemeanor during the qualifying year, 2023, when she had two or more prior misdemeanor convictions. Following an unsuccessful informal appeal, Ms. C. requested a formal appeal hearing.

At the initial telephonic hearing set for October 31, 2024, Ms. C. was present but appeared unable to remain awake approximately fifteen minutes into the hearing, possibly due to medical issues.¹ As the hearing proceeded, unsuccessful efforts were made multiple times to wake Ms. C. The Division presented their case with questions from the ALJ, but without Ms. C.’s participation. Based upon the circumstances set forth above, Ms. C. was offered, by Order issued on October 31, 2024, the opportunity to schedule a supplemental hearing if she requested so by November 12, 2024, at 4:30 p.m. No request for a supplemental hearing was received from Ms. C. by the deadline.

II. Facts

This appeal is governed by AS 43.23.005(d)(B)(ii) and the facts relevant to the application are not in dispute. The following factual recitation is based upon the record and the exhibits appended to the Division’s referral, admitted into evidence, and the formal hearing position statement and testimony provided by the Division representative, Delilah Bernaldo.

Ms. C. is a lifelong resident of Alaska who, per self-report, has not applied for a PFD in many years.² She timely filed for a 2024 PFD.³ The Division later mailed Ms. C. a Request for Information asking Ms. C. to explain why she had not filed a 2023 PFD

¹ Pre-sworn recorded hearing statement of Ms. C.

² Div. Ex. 4, p. 2.

³ Div. Ex. 1.

application.⁴ Ms. C. timely completed and returned the provided form, disclosing that she had not applied for the 2023 PFD because she had been incarcerated at a City A facility.⁵ Her application was subsequently denied by the Division based on its determination that she had been incarcerated during all or part of the 2023 qualifying year after having been incarcerated due to a felony conviction, or a felony probation or parole violation.⁶ Ms. C. filed a timely informal appeal asserting that she was not incarcerated for felony probation or parole violations⁷.

After her informal appeal was filed, the Division received notice from the Department of Corrections that the Department had incorrectly identified Ms. C. as having been incarcerated at some time during the calendar year 2023 as the result of a felony conviction.⁸ The Division also received a second notice from the Department of Corrections identifying Ms. C. as having been incarcerated during the 2023 calendar year as a result of a misdemeanor conviction in this state, Case No. 1JU-22-00000 CR on 2/17/22, after being convicted of two prior misdemeanors, Case No. 1JU-13-000000 CR on 11/20/13 and Case No. 1SI-03-00000 CR on 3/11/2003.⁹

The Division issued an Informal Appeal Decision.¹⁰ In its decision, the Division acknowledged as incorrect its determination that Ms. C. was ineligible for the 2024 PFD based upon its original notification that she had been incarcerated during all or part of the 2023 qualifying year due to a felony conviction, or a felony probation or parole violation.¹¹ However, the Division found, after contacting the Department of Corrections to verify the conviction under which Ms. C. was incarcerated in the qualifying year of 2023, that she remained ineligible for the 2024 PFD because she had been incarcerated on a misdemeanor conviction after being convicted of two or more prior misdemeanor convictions.¹²

Ms. C. has a misdemeanor criminal conviction from March 11, 2003, for misdemeanor disorderly conduct, Case No. 1SI-03-00000 CR.¹³ Additionally, she has a

⁴ Div. Ex. 2.
⁵ Div. Ex. 2.
⁶ Div. Ex. 3.
⁷ Div. Ex. 4.
⁸ Div. Ex. 5, p. 1.
⁹ Div. Ex. 5, p.2.
¹⁰ Div. Ex. 6.
¹¹ Div. Ex. 6, p. 1.
¹² Div. Ex. 6, p.1.
¹³ Div. Ex. 5, p. 2.

misdemeanor criminal conviction from November 20, 2013, for misdemeanor larceny of money, Case No. 1JU-13-000000 CR. In addition to these two misdemeanor convictions, during the 2023 qualifying year, she was convicted on February 17, 2022, for a misdemeanor assault in the 4th, Case No. 1JU-22-00000 CR.¹⁴ While the conviction date was early in 2022, the Department of Corrections confirmed that Ms. C.'s remand and incarceration dates were from October 21, 2022, through March 24, 2023, thus continuing into the qualifying year for the 2024 dividend.¹⁵

III. Discussion

This case is governed by AS 43.23.005(d)(2)(B)(ii).

(d) Notwithstanding the provisions of (a) – (c) of this section, 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 or more misdemeanors as defined in AS 11.81.900.

This section applies to convictions after December 31, 1996.

According to the records provided by the Department of Corrections, Ms. C. was incarcerated from October 21, 2022, to March 24, 2023, in Case No. 1JU-22-00000 CR. Thus, she was incarcerated during all or part of 2023, the qualifying year for the 2024 PFD.¹⁶ Because she had two or more prior misdemeanor convictions as defined in AS 11.81.900, this incarceration was disqualifying.

As the individual challenging the Division's decision, it is Ms. C.'s burden to establish that it is more likely than not that she is eligible for the 2024 PFD.¹⁷ Ms. C. failed to meet her burden.

¹⁴ Div. Ex. 5, p.2.

¹⁵ Div. Ex. 5, p.2.

¹⁶ Div. Ex. 5, p. 2, AS 43.23.005(d)(2)(B).

¹⁷ 15 AAC 05.030(h).

IV. Conclusion

Because Ms. C.'s misdemeanor incarceration in 2023 made her ineligible, the Division's denial of her 2024 application is AFFIRMED. This decision does not affect her eligibility in future years.

Dated: November 18, 2024

By: Signed
Signature
Beth Goldstein
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.]

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 15th day of December, 2024.

By: Signed
Signature
Adam Crum
Name
Commissioner of Revenue
Title

