

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

In the Matter of)	
)	
K. M.)	OAH No. 24-0637-PFD
_____)	

DECISION

I. Introduction

Among the eligibility requirements for Alaska’s Permanent Fund Dividend (“PFD”) is a provision that makes persons ineligible to receive a dividend if, during the qualifying year, they spent time incarcerated for a misdemeanor conviction and they were previously convicted of a felony, or two or more misdemeanors.

In 2023, K. M. spent 51 days on electronic monitoring in lieu of jail time after being convicted of a misdemeanor offense. Mr. M. had been previously convicted of misdemeanor crimes in 2012 and 2016. Finding that Mr. M.’s time on electronic monitoring counted as “incarceration,” the Permanent Fund Dividend Division (the “Division”) denied his application for the 2024 PFD. Mr. M. appeals this determination, arguing that time spent on electronic monitoring does not count as incarceration. Because the law is clear that electronic monitoring constitutes incarceration for PFD eligibility purposes, the Division’s denial is AFFIRMED.

II. Facts

Mr. M. was convicted of misdemeanors in 2012 and 2016.¹ More recently, he was convicted of a misdemeanor on June 5, 2023, for operating a vehicle under the influence of alcohol.² Mr. M. chose to serve his unsuspended jail time by participating in an electronic monitoring program offered by the Department of Corrections. Under this program, offenders are required to remain at home unless going out for work, community-based treatment, community work service, medical appointments, or religious functions.³ Mr. M. reported to the Electronic Monitoring Program on September 25, 2023, and remained in the program through November 15, 2023.⁴

¹ Exhibit 8 and 9. During the hearing, Mr. M. acknowledged he had been convicted in these cases.

² Exhibit 5.

³ See <https://courts.alaska.gov/shc/criminal/after-sentencing.htm#monitoring> (accessed November 19, 2024).

⁴ Exhibit 4.

The Division denied Mr. M.’s application for the 2024 PFD on the grounds that his incarceration in 2023, combined with his two earlier misdemeanor convictions, rendered him ineligible under AS 43.23.005(d).⁵ Mr. M. filed an informal appeal, but the Division upheld the denial.⁶ Mr. M. then filed a formal appeal, stating, “I was on house arrest. I did not believe house arrest was being incarcerated.”⁷ Mr. M. appeared for an in-person hearing on November 18, 2024, at which the Division was represented by PFD Specialist Delilah Bernaldo. During the hearing, Mr. M. argued that the time he spent on electronic monitoring should not be considered incarceration since he served his sentence at home, and paid a daily fee that covered his monitoring expenses.

III. Discussion

This case is governed by Alaska Statute 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 2024 PFD was 2023.⁸ Mr. M. had been convicted of two misdemeanors before that year. Therefore, he would not be eligible for a dividend in 2024 if he was incarcerated for any amount of time in 2023 due to another misdemeanor conviction. It is undisputed that Mr. M. served 51 days on electronic monitoring in 2023 for his misdemeanor conviction that year.

The legal question presented is whether time served on electronic monitoring constitutes “incarceration” as that term is used in the statute. This question is answered by the Division’s regulation at 15 AAC 23.993(a)(15), which defines incarceration broadly:

⁵ Exhibit 2.

⁶ Exhibit 6.

⁷ Exhibit 7.

⁸ AS 43.23.095(6).

- (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 specifically references electronic monitoring, Mr. M. was indeed incarcerated when he served time on electronic monitoring during 2023 for his misdemeanor conviction that year. Coupled with his two prior misdemeanors, his incarceration in 2023 disqualifies him from receiving a PFD in 2024.⁹

IV. Conclusion

The Division’s denial of Mr. M.’s 2024 PFD application is AFFIRMED.

Dated: November 20, 2024

By: Signed
Signature
Max Garner
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.]

⁹ Time spent on electronic monitoring has also been recognized as “incarceration” in two prior administrative decisions. *See In re K.M.*, OAH No. 22-0162-PFD (Dept. of Revenue 2022) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6915>); *In re N.Q.*, OAH No. 17-1110-PFD (Dept. of Revenue 2017) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5787>).

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 the 17th day of December, 2024.

By: Signed
Signature
Max Garner
Name
Administrative Law Judge
Title