

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

In the Matter of)	
)	
D. A.)	OAH No. 24-0638-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, D. A. spent three days in jail for violating conditions of probation that were imposed as part of her sentence for a misdemeanor assault conviction in 2019. Prior to that Ms. A. had been convicted of two prior misdemeanor offenses. Based on this, the Permanent Fund Dividend Division (the “Division”) denied her application for the 2024 PFD. Ms. A. appeals this determination, arguing that she was unjustly imprisoned for a probation violation that she did not actually commit. For the reasons discussed below, the Division’s denial is AFFIRMED.

II. Facts

Ms. A. was convicted of misdemeanor offenses committed in 2009 and 2014.¹ More recently, she was convicted of misdemeanor assault on December 9, 2019, for which she received a sentence of 90 days with all 90 days suspended. Ms. A. was placed on probation for a period of 3 years subject to conditions that included a requirement that she report to the Alcohol Safety Action Program (“ASAP”) and follow all recommendations for outpatient treatment.² After Ms. A. failed to report to ASAP, a petition to revoke her probation was filed on July 16, 2020.³ From this point a pattern developed where Ms. A. would be arrested on bench warrants, released on minimal bail, and thereafter fail to appear for subsequent court dates.⁴

¹ Exhibit 12 at p. 2.
² Exhibit 7 at pp. 3-4.
³ Exhibit 7 at p. 5.
⁴ Exhibit 7 at pp. 18-20.

This pattern continued until June 23, 2023, when Ms. A. appeared before the court and admitted that she had violated her conditions of probation.⁵ She was given one last opportunity to report to ASAP, but again failed to do so. This led to a disposition hearing on August 21, 2023, where Ms. A. asserted that she had never been ordered to report to ASAP as part of her original sentence. This argument was swiftly rejected by the judge assigned to her case, who explained that he had reviewed a recording of that hearing to confirm the accuracy of court documents which showed that an ASAP reporting requirement had been included as one of her probation conditions.⁶ After addressing that issue, the judge deleted the ASAP reporting requirement from Ms. A.'s probation conditions while sentencing her to serve three days in jail as a penalty for her past non-compliance.⁷ Ms. A. was immediately remanded to serve this time and was released from custody on August 24, 2023.⁸

Ms. A. appeared for an in-person hearing on November 18, 2024, at which the Division was represented by PFD Specialist Peter Scott. In her hearing request, Ms. A. asserted that the jail time she served in 2023 should not count against her because her probation conditions never included an ASAP reporting requirement and that she had been unjustly punished "based on an incorrect interpretation of my plea agreement."⁹ Ms. A. persisted with this argument during her hearing despite court documents introduced by the Division which detailed the proceedings described above.

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

⁵ Exhibit 7 at p. 18.

⁶ Exhibit 7 at p. 12.

⁷ Exhibit 7 at p. 14.

⁸ Exhibit 12 at p. 2.

⁹ Exhibit 3 at p. 5.

(ii) two of more prior misdemeanors as defined in AS 11.81.900.

The qualifying year for the 2024 PFD was 2023.¹⁰ Having been convicted of misdemeanors committed in 2009 and 2014, Ms. A. would not be eligible for a dividend in 2024 if she was incarcerated for any amount of time in 2023 due to another misdemeanor conviction. Since it is undisputed that Ms. A. served three days in jail in 2023 for a subsequent misdemeanor offense, she is accordingly ineligible to receive a PFD in 2024. The fact this time was served for a probation violation is irrelevant, since it was a period of incarceration imposed as a direct result of her 2019 conviction.¹¹

While Ms. A. asserts that her incarceration in 2023 was unjustly imposed, the evidence here leaves no room for doubting that (1) an ASAP reporting requirement was included in her probation convictions; and (2) Ms. A. chose to ignore that requirement despite repeated reminders. Moreover, under the doctrine of collateral estoppel Ms. A. cannot raise arguments in this administrative proceeding that were specifically rejected by the judge in her criminal case.¹²

IV. Conclusion

The Division's denial of Ms. A.'s 2024 PFD application is AFFIRMED.

Dated: December 4, 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.]

¹⁰ AS 43.23.095(6).

¹¹ It has been recognized in other administrative decision that time served for a probation violation is properly considered incarceration "as a result of the conviction in this state" under 43.23.005(d)(2). See *In re M.K.*, OAH No. 11-0464-PFD (Dept. of Revenue 2012) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5580>); *In re K.B.*, OAH No. 13-0235-PFD (Dept. of Revenue 2013) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5623>); *In re E.D.*, OAH No. 15-1299-PFD (Dept. of Revenue 2015) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5711>).

¹² See *Guilford v. Weidner Inv. Servs., Inc.*, 522 P.3d 1085, 1095 (Alaska 2023) (holding that collateral estoppel (also known as issue preclusion) prohibits a party from relitigating an issue of fact when (1) the party against whom the preclusion is asserted was a party to the first action; (2) the issue in question is identical to the issue decided in the first action; (3) the issue was resolved in the first action by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.

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 3rd day of January, 2025.

By: Signed_____

Signature

Max Garner_____

Name

Administrative Law Judge_____

Title