

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

In the Matter of)	
)	
H. D.)	OAH No. 24-0639-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 after they were previously convicted of a felony or two or more misdemeanors.

In 2023, H. D. spent two days in jail after being convicted of the misdemeanor offense of driving under the influence (“DUI”). Since Mr. D. was previously convicted of misdemeanor crimes in 2003 and 2017, the Permanent Dividend Division (the “Division”) denied his application for the 2024 PFD. Mr. D. appeals this determination, arguing that the loss of his PFD is unfair under the circumstances presented here. Mr. D. also contends that he should receive the “energy relief” portion of the 2024 PFD even if his incarceration in 2023 makes him ineligible to receive the remainder of his dividend.

As discussed below, restrictions on PFD eligibility imposed by the legislature cannot be modified or disregarded the Division, either in whole or in part. Thus, the Division does not have the discretion to ignore a PFD applicant’s past misdemeanor convictions based on arguments of fairness. Nor can the “energy relief” payment included within the 2024 PFD be paid to persons who are otherwise ineligible to receive a dividend. Accordingly, the Division’s denial of Mr. D.’s application is AFFIRMED.

II. Facts

Mr. D. was convicted of misdemeanors in 2003 and 2017.¹ More recently, on November 28, 2023, he was convicted of misdemeanor DUI for which he was sentenced to serve 30 days in jail with 27 days suspended.² According to information provided by the Alaska Department of Corrections, Mr. D. was credited with time he spent in jail following his arrest on April 20, 2023,

¹ Exhibit 5. Mr. D. acknowledged he had been convicted of these offenses during his hearing testimony.

² Exhibit 3.

and reported to the City A Correctional Center on December 31, 2023, to serve the balance of his unsuspended jail time. He was released from custody on January 2, 2024.³

The Division denied Mr. D.’s application for the 2024 PFD based on its determination that his incarceration in 2023, combined with his two earlier misdemeanor convictions, rendered him ineligible under AS 43.23.005(d)(2)(B)(ii).⁴ Mr. D. filed an informal appeal, but the Division upheld the denial.⁵ Mr. D. then filed a formal appeal, stating, “Although I was incarcerated for part of 2023 the law regarding PFD disqualification should not apply because my conviction history does not include any felony charges nor misdemeanors resulting in automatic ineligibility as defined by statute.”⁶

Mr. D. appeared for a telephonic hearing on November 18, 2024, at which the Division was represented by PFD Specialist Peter Scott. During the hearing, Mr. D. additionally argued that (1) his 2003 misdemeanor is so far in the past that it should not count against him any longer; and (2) he is entitled to receive the energy relief payment of \$298.17 that was included as part of the 2024 PFD regardless of his past criminal convictions.⁷

III. Discussion

This matter is governed by AS 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

(A) felony; or

(B) misdemeanor if the individual has been convicted of

(i) a prior felony as defined by AS 11.81.900; or

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

³ Exhibit 5.

⁴ Exhibit 2.

⁵ Exhibit 4.

⁶ Exhibit 5 at p. 2.

⁷ The 2024 PFD payment was \$1,702, which was comprised of a dividend payment of \$1,403.83, and an “energy relief payment” of \$298.17. *See* Division Position Statement at p. 8.

Under AS 11.81.900, a felony is any crime for which a sentence of imprisonment greater than one year is authorized.⁸ A misdemeanor is any crime for which a sentence of imprisonment not exceeding one year may be imposed.⁹

The qualifying year for a 2024 PFD was 2023.¹⁰ Since Mr. D. was convicted of two misdemeanor offenses before that year, 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. D. was incarcerated for two days in 2023 due to his DUI conviction. He is accordingly ineligible to receive a PFD in 2024.

While Mr. D. contends that his 2023 DUI conviction should not result in “automatic ineligibility,” this is the precise outcome required by the unambiguous language of the statute. Quite simply, when an Alaska resident with two or more misdemeanor convictions spends time incarcerated for a third misdemeanor conviction, that person is ineligible to receive a PFD in the following year.

Mr. D. additionally argues that his 2003 misdemeanor conviction should not be counted against him because it occurred over 20 years ago at a point when he was only 19 years old. However, he does not point to any statutes or regulations in support of this argument. Nor does the language of AS 43.23.005(d)(2)(B)(ii) grant the Division discretion to ignore a past misdemeanor conviction based on an applicant’s assertion that it was a mere youthful indiscretion.

Since Mr. D. is ineligible for the 2024 PFD, he is likewise ineligible to receive the “energy relief payment” of \$298.17 that was included within the overall dividend amount. This outcome is compelled under a prior administrative decision where the Commissioner of Revenue concluded that the energy relief payment was adopted by the legislature as a component of the overall dividend, as opposed to being a separate payment that is subject to different eligibility requirements.¹¹

⁸ AS 11.81.900(25).

⁹ AS 11.81.900(39).

¹⁰ AS 43.23.095(6).

¹¹ *In re C.C.*, OAH No. 22-0852-PFD (Comm’r Dept. of Revenue 2022) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6897>).

Accordingly, because Mr. D. spent time incarcerated in 2023 due to his conviction for a third misdemeanor offense, he is ineligible to receive any portion of the 2024 PFD.¹²

IV. Conclusion

The Division's denial of Mr. D.'s 2024 PFD application is AFFIRMED.

Dated: November 29, 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.]

¹² The timing of Mr. D incarceration is unfortunate, since it resulted in him spending time incarcerated in both 2023 and 2024. This may well impact his eligibility for the 2025 PFD.

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 30th day of December, 2024.

By: Signed
Signature
Max Garner
Name
Administrative Law Judge
Title