

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

In the Matter of	)	
	)	
J. T.	)	OAH No. 22-0950-PFD
	)	

DECISION

I. Introduction

J. T. was denied a 2022 Permanent Fund Dividend (“PFD”) because he was incarcerated during 2021 and had two prior misdemeanor convictions. The Department of Revenue Permanent Fund Dividend Division (“Division”) confirmed this information with the Department of Corrections, and Mr. T. has offered no contradictory evidence. He instead argues for PFD eligibility as a matter of fairness and financial need. The Division does not have discretion to consider such factors. Accordingly, the Division’s decision is affirmed.

II. Background

A person who is incarcerated during any part of the qualifying year on a misdemeanor conviction, and has at least two prior misdemeanor convictions, is ineligible for a PFD.¹

Mr. T. was convicted of misdemeanor assault on July 22, 2020 and sentenced to serve two days in jail.² To accommodate his work schedule, Mr. T. moved for and was granted a delay in remanding to serve his sentence until December 28, 2020.³ Mr. T. testified that he reported to serve his sentence at that time, but because COVID rates had spiked, he was given the option to leave and receive a new remand date.⁴ Mr. T. chose the option to delay his incarceration.⁵

¹ AS 43.23.005(d)(2).

² Ex. 6.

³ T. testimony; Ex. 7 at 2; docket for 3PA-20-00000CR, of which administrative notice is taken.

⁴ T. testimony.

⁵ *Id.*

Mr. T. was given a new remand date of January 29, 2021.⁶ For reasons Mr. T. could not recall, he failed to remand.⁷ A warrant was issued, resulting in a new remand date of May 20, 2021, which is when Mr. T. served his sentence.⁸

The Division denied Mr. T.'s application for a 2022 PFD because he was incarcerated during the qualifying year, 2021, and had at least two prior misdemeanor convictions. The Department of Corrections provided the Division with information on two of Mr. T.'s prior misdemeanor convictions — disorderly conduct in 2019 and driving without a valid license in 2009.⁹ Court records confirm those misdemeanor convictions and show additional ones.¹⁰

Mr. T. appealed, stating that his incarceration did not occur in 2020 because of “delays from court and my extensions for my seasonal work.”¹¹ The Division issued an informal appeal decision affirming its denial.¹² Mr. T. requested a formal appeal hearing, reiterating that there had been delays in resolving his misdemeanor case and explaining that he did not serve his sentence in December 2020 because of a spike in COVID cases.¹³

A hearing was held on January 23, 2023. Mr. T. testified, along with Delilah Bernaldo, representing the Division.

III. Discussion

As the appellant, Mr. T. has the burden of proving that he is eligible for a 2022 PFD.

A person who was incarcerated for a misdemeanor conviction during any part of the qualifying year and has two or more prior misdemeanor convictions is ineligible for a PFD.¹⁴ The Division provided evidence from the Department of Corrections that Mr. T. was incarcerated in 2021 on a misdemeanor conviction and that he had at least two prior misdemeanor convictions. Mr. T. neither denied these facts nor provided any contradictory evidence.

⁶ T. testimony; CourtView docket for 3PA-20-00000CR.

⁷ *Id.*

⁸ *Id.*

⁹ Ex. 6.

¹⁰ See records for 3PA-04-00000CR (DUI); 3PA-05-00000CR (DUI); 3AN-05-00000CR (driving without insurance); 3PA-05-00000CR (driving without valid license); 3PA-10-00000CR (criminal mischief); 3PA-15-00000CR (disorderly conduct).

¹¹ Ex. 3 at 7.

¹² Ex. 5.

¹³ Ex. 7 at 2.

¹⁴ AS 43.23.005(d)(2).

Mr. T. argued that it was unfair for him to be ineligible for a 2022 PFD. He cited his financial need, court delays because of COVID, his need to delay serving his sentence because of his seasonal work schedule, and the fact that he was ineligible for a 2021 PFD as well. These reasons no doubt cause considerable frustration for Mr. T., but these are simply not factors the Division has any discretion to consider when determining eligibility.¹⁵ By statute, if Mr. T. was incarcerated in 2021, and had two priors, the Division must deny a 2022 PFD. The statute does not give the Division any discretion to waive these eligibility requirements. Mr. T.’s reasons for voluntarily delaying his own incarceration — to accommodate his work schedule and accepting the option to delay in December 2020 because of COVID case levels — are not issues the Division can take into account. Nor does the statute allow the Division to consider court delays in reaching a conviction or a person’s financial needs. The statute requires the Division to look at when Mr. T. was incarcerated. There is no question he was incarcerated in 2021. And there is no question he had at least two prior misdemeanor convictions. Thus under the statute he is ineligible.

COVID certainly impacted the operation of government institutions and people’s lives in unprecedented ways. The legislature acknowledged this in passing SB241, which temporarily modified eligibility requirements for certain persons unable to return to the state because of COVID quarantines.¹⁶ The legislature did not, however, provide any modifications to eligibility related to criminal incarceration. COVID-related delays are unfortunate, but they are simply not a factor the Division has authority to consider when determining eligibility.

With no evidence contradicting the fact that he was incarcerated in 2021 or that he had at least two prior misdemeanor convictions, Mr. T. has not met his burden to show that he is eligible for a 2022 PFD. Accordingly, the Division’s decision is affirmed.

Mr. T. also raised concerns with being denied a 2021 PFD based on the misdemeanor sentence he served in 2021. His 2021 PFD is not on appeal here, nor does the record include information on that application or whether Mr. T. was “incarcerated *as a result of*

¹⁵ Mr. T. also pointed to language in AS 43.23.005(g) regarding determination of the date of a felony conviction. That provision does not apply to ineligibility because of misdemeanors. Nor is the conviction date an issue here. The issue is when Mr. T. was incarcerated.

¹⁶ AK LEGIS 10 (2020), 2020 Alaska Laws Ch. 10 (S.B. 241) at Section 16.

the [misdemeanor] *conviction*” during any part of 2020.¹⁷ Thus this decision is unable to address Mr. T.’s 2021 eligibility.

IV. Conclusion

Because Mr. T. was incarcerated in 2021 on a misdemeanor conviction and had at least two prior misdemeanor convictions, he was ineligible for a 2022 PFD under AS 43.23.005(d)(2). The Division’s decision is affirmed.

DATED: January 25, 2023.

SIGNED
Rebecca Kruse
Administrative Law Judge

¹⁷ AS 43.23.05(d)(2) (emphasis added).

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 21st day of February, 2023.

By: SIGNED

Signature

Rebecca Kruse

Name

Administrative Law Judge

Title

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