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

In the Matter of	)	
	)	
B. J.	)	OAH No. 23-0225-PFD
	)	

DECISION

I. Introduction

The Permanent Fund Dividend Division (Division) denied B. J.'s application for a 2022 Alaska Permanent Fund Dividend (PFD) because she was incarcerated for a misdemeanor conviction during the 2021 qualifying year, after having been convicted of two prior misdemeanors. Ms. J. filed an informal appeal of the Division's decision, followed by a formal appeal requesting a hearing by correspondence.

The record shows that Ms. J. was 23 days late requesting an informal appeal, and she provided no evidence of reasonable cause for the late request. The record also shows that she was incarcerated during a portion of the 2021 calendar year due to a misdemeanor conviction, and that she had two prior misdemeanors. Accordingly, this case is dismissed, and the Division's denial of Ms. J.'s application for a 2022 PFD is AFFIRMED.

II. Facts

The following facts are established by a preponderance of the evidence.

On June 3, 2021, Ms. J. was convicted of a Class A misdemeanor in Case No. 3PA-19-00000CR.[1] She was incarcerated for the conviction for a period of time during the 2021 calendar year.[2]

Previously, Ms. J. had been convicted of two other misdemeanors in 2019: one in Case No. 3PA-19-00000CR, and one in Case No. 3PA-19-00000Cr.[3]

Ms. J. timely filed her application for a 2022 PFD.[4] On August 12, 2022, the Division denied her application based on AS 43.23.005(d), which states that a person is ineligible for a PFD

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1 The misdemeanor conviction was for concealment of merchandise, following the entry of a guilty plea. Ex. 7. Ms. J. was sentenced to 90 days in jail, with 75 days suspended. Ex. 7.

2 Exs. 4 and 7. Documentation from the Department of Corrections indicates that Ms. J. was incarcerated from May 15, 2021 through June 4, 2021, while a June 3, 2021 judgment shows she had been sentenced to 15 days time served. Despite the slight discrepancy between these two documents regarding the precise number of days Ms. J. served time, the documents together show that she was indeed incarcerated for a period of time during 2021 for the misdemeanor conviction in that case.

3 Exs. 4 and 7.

if he or she was incarcerated during the qualifying year as the result of a misdemeanor conviction, after having been convicted of a prior felony and/or two or more prior misdemeanors. In its letter denying the application, the Division informed Ms. J. that she had until September 11, 2022, to file an informal appeal of the Division's decision.

Ms. J. submitted an informal appeal on October 4, 2022. The reason she gave for appealing is that she "never had a felony or [had] been imprisoned for such." She provided no explanation for why her appeal was late.

After confirming with the Department of Corrections that Ms. J. had been incarcerated at some time during 2021, the Division held to its original position that she was not entitled to a 2022 PFD. Ms. J. then requested a formal hearing, writing on the hearing request form, "I've only been arrested for two misdemeanor one 50 dollars or less petty theft and one non trespassing 2 years apart. I received last years. Please advise me." [5] She checked the box on the form for a hearing by written correspondence, meaning an oral hearing would not be held, but each party could file written argument or other documents for consideration.[6] The parties were given until May 5, 2023 to submit these materials, and until May 19, 2023 to respond to any information received by the other. The Division filed a position statement and hearing exhibits. Ms. J. did not file any documents.

III. Discussion

The Division presented two arguments: (1) Ms. J.'s appeal should be dismissed because the request for an informal appeal was late; and (2) Ms. J. is not eligible for a 2022 PFD under AS 43.23.005(d)(2)(B)(ii) in any event because she was incarcerated in 2021 due to a misdemeanor conviction, after having been convicted of two or more prior misdemeanors. These arguments will be addressed in order.

A. The appeal should be dismissed as untimely.

Under the Division's regulations, the deadline to file an appeal of the Division's decision to deny a PFD application is 30 days after the decision was issued.[7] An exception to the 30-day appeal window applies if the applicant demonstrates reasonable cause for failing to

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4 Ex. 1.
5 Ex. 6.
6 Ex. 6.
7 15 AAC .05.010(b)(5).

file within this period.[8] Similarly, the Administrative Law Judge may waive the appeal deadline if adherence to the deadline would "work an injustice[.]"[9]

Here, there is no dispute that Ms. J. missed the 30-day deadline for filing an appeal, as her informal appeal was filed 23 days after the September 11, 2022 deadline. Moreover, she has done nothing to demonstrate reasonable cause for the delay. Nor is there anything in the record to suggest that adhering to the deadline would work an injustice.

The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions in the past. Historically, the appeal deadlines have only been set aside in particularly compelling circumstances.[10] None have been shown here.

B. **Ms. J. is ineligible for a 2022 PFD under AS 43.23.005(d)(2)(B)(ii).**

Even if Ms. J.'s informal appeal were timely, however, her appeal fails based on 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
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> ***
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> (2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a
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> (B) misdemeanor if the individual has been convicted of
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> ***
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> (ii) two of more prior misdemeanors as defined in AS 11.81.900.

The qualifying year for a 2022 PFD was 2021.[11] Ms. J. was incarcerated for a period of time in 2021, as a result of her misdemeanor conviction in Case No. 3PA-19-00000CR. She also had two prior misdemeanors. Under the standard in AS 43.23.005(d)(2)(B)(ii), Ms. J.'s period of incarceration during the 2021 calendar year, coupled with her two prior misdemeanors, disqualifies her for a 2022 PFD. Her argument that she has never had a felony or felony conviction is immaterial to the outcome here.

IV. Conclusion

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8 15 AAC .05.010(b)(5).

9 15 AAC 05.030(k).

10 Prior decisions regarding the enforcement or waiver of PFD appeal deadlines can be found at http://doa.alaska.gov/oah/Decisions/pfd.html.

11 AS 43.23.095(6).

Ms. J. provided no justification for her untimely informal appeal, and she was ineligible for a 2022 PFD in any event. The Division's motion to dismiss the appeal is granted.

DATED: June 5, 2023.

Signed

Lisa M. Toussaint
Administrative Law Judge

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 28th day of June, 2023.

By: *Signed*
Signature

Lisa M. Toussaint
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.]