

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

In the Matter of	)	
	)	
S. O.	)	OAH No. 23-0060-PFD
	)	

DECISION

I. Introduction

S. O. was denied a 2022 Permanent Fund Dividend (PFD) because the PFD Division determined that, during the qualifying year, he had been incarcerated as a result of a misdemeanor conviction after having been convicted of two prior misdemeanors. Mr. O. requested a hearing, arguing that he shouldn't be found ineligible because he had been incarcerated for only driving with a suspended license, his license should not have been suspended, and in addition it was unfair for the Division to withhold his entire PFD rather than just part of it.

The telephonic hearing was scheduled for February 23, 2023 at 11:00 a.m., but at that time Mr. O. did not answer several calls to his telephone number of record, nor did he respond to voicemail messages left for him at that number. PFD Specialist I Delilah Bernaldo appeared for the Division and was prepared to present the Division's case if Mr. O. had appeared. An order was issued on that date, giving Mr. O. until March 7, 2023 to explain in writing his good cause for missing the hearing. Mr. O. did not meet that deadline, but about two weeks after the deadline he submitted a handwritten note stating that he had missed the hearing because that morning he had broken his phone.

Based on the written evidence provided by the parties, and after due deliberation, this decision concludes that Mr. O. is not qualified for the 2022 PFD, because he was incarcerated during the qualifying year as a result of a misdemeanor conviction after having been convicted of two prior misdemeanors. The decision of the Division is affirmed.

II. Facts

In 2016, Mr. O. was convicted on a guilty plea of Driving with License Cancelled/Suspended/Revoked, in case number 3HO-15-00000CR.¹ IN 2018, he was

¹ Division Exh. 4.

convicted on a guilty plea of violating conditions of release in case number 3HO-17-00000CR.² Both of these convictions were misdemeanors.

On June 23, 2020, Mr. O. was convicted on a guilty plea to another charge of Driving with License Cancelled/Suspended/Revoked, in case number 3HO-20-00000CR.³ According to documentation from the Department of Corrections, he was incarcerated on that conviction from January 27 to February 3, 2021.⁴ In his formal appeal paperwork, Mr. O. admits that he was incarcerated for that conviction: “I S. O. had to serve 10 days for a driving violation”⁵

Mr. O. timely filed his application for the 2022 PFD.⁶ His application was denied based on AS 43.23.005(d), which provides that a person is not eligible for a PFD if during the PFD qualifying year they were incarcerated as the result of a misdemeanor conviction after having been convicted of a prior felony and/or two or more prior misdemeanors. He submitted an informal appeal, which was denied after the Division obtained confirmation from the Department of Corrections of the dates of his incarceration in 2021.⁷ Mr. O. then submitted a formal appeal, in which he argued “I don’t think it’s right to hold my whole Permanent fund.”

Mr. O. has not disputed the Department of Corrections record showing that he was incarcerated in late January and early February 2021 on a misdemeanor conviction, nor did he dispute that he was convicted of two prior misdemeanors in 2016 and 2018. However, in his appeal papers he argues that his license should never have been suspended, and that it is unfair for the Division to withhold his entire PFD rather than just part of it.

III. Discussion

A. Failure to Appear at the Hearing

The issue to be decided in this case is whether or not Mr. O. is eligible for the 2022 PFD. At the outset, however, the question of his failure to appear at the February 23, 2023 hearing must be addressed. Under Department of Revenue regulations, if a party appealing a PFD eligibility issue fails to appear for their hearing, the hearing officer “may issue a decision

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Division Exh. 6, p. 2 (O. request for formal hearing).

⁶ Division Exh. 1.

⁷ Division Exh. 6, p. 2.

without taking evidence from that person, unless the person within 10 days after the date schedule for hearing, shows reasonable cause to failure to appear.”⁸

After failing to appear for the hearing on February 23, 2023, Mr. O. was sent a notice giving him the opportunity to explain in writing why he missed his hearing, with a deadline of March 7, 2023 (actually 12 days after the date of the notice). About two weeks after the deadline, he submitted a written statement as follows:

The reason I missed my hearing date is because the morning of the 23rd I broke my phone because it got wet but as I can see I am waisting [*sic*] my time and your time.^[9]

This statement, submitted two weeks past the deadline, is insufficient to establish reasonable cause for missing the hearing. Mr. O. failed to explain why he couldn’t borrow a phone, or use a phone at a public facility, or figure out a way to send an email or even a fax transmission on February 23 to at least advise the administrative law judge regarding his unavailability for the hearing. He also failed to explain whether he made any other effort to address his phone problem so that he could try to attend the hearing. Instead he waited until well past the deadline and then submitted what amounts to a bare excuse for not showing up for the hearing that he requested. Mr. O. failed to meet the requirements of 15 AAC 05.030(j), with the result that this decision will be based on the written evidence presented by the Division and by Mr. O. with his appeal paperwork, without any testimony being taken at a hearing.

B. Eligibility for the 2022 PFD

On the question of whether Mr. O. should have been found eligible for the 2022 PFD, Mr. O. presented arguments in several documents in the record. In his request for informal appeal, he states the following:

It wasn’t a felony it was a traffic violation driving with suspended license which was thrown out of court and dismissed, they should have never suspended license [I] was never found guilty. Judge dismissed case, found not guilty. They suspended license for no reason, cost me hundreds of dollars for something not guilty for.

I haven’t received a permanent fund in 4 years due to child support. I finally got back bill taken care of. I think I should receive a 2022 permanent fund it’s my right to get my funds after 4 years, it’s my payment. I don’t think it’s right for the state to keep taking it from me, they always find a reason, it’s my money.^[10]

⁸ 15 AAC 05.030(j).

⁹ O. response to order regarding failure to appear, received by OAH on March 21, 2023.

¹⁰ Division Exh. 3, p. 2.

In his request for formal hearing, Mr. O. does not elaborate on the arguments in his informal appeal. Instead he admits to having been incarcerated during the 2021 qualifying year, and he argues that “I don’t think its right to hold my whole permanent fund.”¹¹

In his response to the order regarding his failure to appear for the hearing, Mr. O. states:

I went to jail for a driving offense for driving without license for a case which got dismissed and thrown out of court been fighting it for years. I can see waisting our time I can see taking part of dividend fund but not all of it because you need it more than I do.^[12]

Although unclear, it appears that Mr. O. believes that the Department has some discretion to perhaps find him partially eligible for the 2022 PFD. However, the statutes governing eligibility provide no such discretion.

The eligibility issue in this case is governed by AS 43.23.005(d)(2)(B), which provides:

(d) Notwithstanding the provisions of (a) – (c) of this section, 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

(i) felony; or

(ii) two or more prior misdemeanors as defined in

AS 11.81.900.

The statute is quite clear – either a person is eligible, or they are not eligible. The Department has no discretion to find a person eligible for a portion of a PFD.

In PFD eligibility appeals, the person appealing the denial of a PFD application has the burden of proving by a preponderance of the evidence that the Division’s denial was incorrect.¹³ In this case, Mr. O. does not dispute that that he was incarcerated in 2021, the qualifying year for the 2022 PFD, nor does he dispute the fact of his two prior misdemeanor convictions. Instead, he argues that he was wrongly convicted of driving with a suspended license, and therefore it would be unfair to find him ineligible for the 2022 PFD. He also appears to

¹¹ Division Exh. 6, p. 2.

¹² O. response to order regarding failure to appear, received by OAH on March 21, 2023.

¹³ 15 AAC 05.030(h).

argue that because he had his prior PFDs garnished for child support, he should be allowed to receive the 2022 PFD.

Mr. O.'s arguments do not address the key elements of AS 43.23.005(d)(2)(B). It is undisputed that he was incarcerated in the qualifying year of 2021 for a misdemeanor conviction, and that prior to that he had two other misdemeanor convictions. That is all that is required under the statute to find a person ineligible. Regarding his argument that he was wrongfully convicted, the statute does not provide any discretion for the Department to review the underlying merits of his criminal convictions – that is something that must be addressed through the court system. Similarly, the Department has no discretion under the statute to address the fairness of finding him ineligible. The Department is limited to applying the statute as written.

Mr. O. did not meet his burden of establishing that he should have been found eligible for the 2022 PFD.

IV. Conclusion

Mr. O. was incarcerated for a misdemeanor conviction in 2021, the qualifying year for the 2022 PFD; and he was convicted of prior misdemeanors in 2016 and 2018. Therefore, he was properly found ineligible for the 2022 PFD. The Division's determination to that effect is hereby AFFIRMED.

Dated: April 17, 2023

SIGNED
Andrew M. Lebo
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 15th day of May, 2023.

By: SIGNED

Signature

Adam Crum

Name

Commissioner, Department of Revenue

Title

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