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

In the Matter of	)	
	)	
N. K. P.	)	OAH No. 23-0061-PFD
	)	

DECISION

I. Introduction

The Permanent Fund Dividend Division (Division) denied N. P.'s application for a 2022 Alaska Permanent Fund Dividend (PFD) because he was sentenced for a felony during the 2021 qualifying year. Following an unsuccessful informal appeal, Mr. P. requested a formal hearing, which was held on February 23, 2023 and March 1, 2023.

The evidence shows that Mr. P. was both sentenced during the 2021 qualifying year and served a period of incarceration during that year due to a felony conviction. Therefore, the Division's denial of Mr. P.'s PFD application is affirmed.

II. Facts

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

N. P. is a long-time Alaska resident. In April 2021, he was arrested for a Class C felony for driving under the influence (DUI) in Case No. 4FA-21-00000CR.[1] On October 11, 2021, he was convicted of the felony and sentenced to serve a term of incarceration of "3 years flat" to begin immediately, with credit for 127 days he had previously spent on house arrest.[2] On October 27, 2021, he was moved to prison housing to serve all or a portion of his felony sentence.[3] Details regarding the sentence and conviction are set forth in several documents, including a Corrections Identification Verification Form provided by the Department of Corrections (DOC) to the PFD Division, and a Judgment and Order of Commitment/Probation in the case.

The Division determined that Mr. P. was not eligible for a 2022 PFD because he was both sentenced and convicted of a felony during the 2021 calendar year as a result of a felony

---

1 Ex. 8, p. 1.

2 Ex. 8, p. 3.

3 Ex. 8, p. 2. The dates of incarceration listed on the Corrections Identification Verification Form provided by the Department of Corrections to the PFD Division are April 26, 2021 to May 18, 2021, and October 11, 2021 to April 25, 2024. Ex. 8, p. 1.

conviction. Although Mr. P. thought at first that he had been put on ankle monitoring immediately after he was sentenced, after reviewing the documents from DOC, he remembered being moved to prison housing.

III. Discussion

This case is governed by AS 43.23.005(d), which states in relevant part:

> (d) . . . an individual is not eligible for a permanent fund dividend for a dividend year when
>
> (1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony.
>
> (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;

Thus, either being sentenced or incarcerated at any time during the qualifying year due to a felony conviction disqualifies a person from eligibility for a PFD. "Incarceration" as defined in the Division's regulations includes "confinement in a facility. . . under a court order for a conviction to restrain an individual's movement or freedom, including a prison. . . ."[4]

The qualifying year for a 2022 PFD was 2021.[5] The evidence establishes that Mr. P. was convicted of a felony in Case No. 4FA-21-00000CR. He was sentenced as a result of that conviction on October 21, 2021, which was during the qualifying year. This disqualified him from receiving a 2022 PFD under AS 43.23.005(d)(1).

Moreover, Mr. P. was incarcerated during the 2021 qualifying year as a result of the felony conviction, as he went to prison on October 27, 2021.[6] His incarceration is an additional basis for disqualification from a 2022 PFD under AS 43.23.005(d)(2)(A).

IV. Conclusion

The Division correctly determined that Mr. P. is ineligible for a 2022 PFD. The denial of Mr. P.'s 2022 PFD application is affirmed.

---

4 15 AAC 23.993(a)(15).

5 AS 43.23.095(6).

6 The definition of incarceration in 15 AAC 23.993(a)(15) also includes a "furlough to a non-penal setting monitored by an electronic device for the purpose of monitoring the individual's movements." Therefore, any time Mr. P. may have spent on ankle monitoring during the 2021 calendar year due to his felony conviction would also constitute incarceration during the qualifying year.

DATED: March 7, 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 31st day of March, 2023.

By: SIGNED
Signature
Lisa M. Toussaint
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.]