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

In the Matter of	)	
	)	
E. S. C.	)	OAH No. 23-0086-PFD
	)	

DECISION

I. Introduction

E. S. C. was denied a 2022 Permanent Fund Dividend (PFD) because the PFD Division determined that, during the qualifying year, she had been incarcerated as a result of a misdemeanor conviction after having been convicted of a prior felony or two prior misdemeanors. Ms. C. requested a hearing, arguing that since she had received a suspended imposition of sentence (SIS), she had not been convicted of a prior felony.

The hearing was held on March 6, 2023. Ms. C. appeared telephonically, represented herself and testified under oath on her own behalf. PFD Specialist I Delilah Bernaldo represented the Division and provided sworn testimony. The record was held open until March 20, 2023 to allow Ms. C. additional time to submit documents supporting her claim.

Based on the evidence and arguments of both parties, and after due deliberation, this decision concludes that Ms. C. is not qualified for the 2022 PFD, because an SIS does not negate the fact that she was convicted of a felony charge. The decision of the Division is affirmed.

II. Facts

On April 11, 2016, Ms. C. was convicted on a guilty plea of Theft in the 2nd Degree, a felony, in case number 3PA-15-00000CR.[1] On September 30, 2021, Ms. C. was incarcerated for one day after her conviction on a guilty plea of Disorderly Conduct, a class B misdemeanor.[2]

Ms. C. timely filed her application for the 2022 PFD.[3] Her 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. She

1 Division Exh. 5.
2 *Id.*
3 Division Exh. 1.

submitted an informal appeal, which was denied after the Division obtained confirmation from the Department of Corrections of the dates of her incarceration in 2021.[4] Ms. C. then submitted a formal appeal, presenting the following handwritten explanation:

> 8/9 & 9/9 were suspend Fines Appointed counsel I quilify for Free Public Defender – charges (fine) added…added fine for speeding ticket are secretly added they are taking advantage of liveley hood... . The order of garnishing is flawed because they are taking advantage & being crude …
>
> 8-2-12 charge of reckless endangerment at sentencing there was no fine and appointed counsel was free. I qualified and appointed counsel judgment.
>
> 4-11-16 theft felony I completed SSI so there should be no felony on my record.
>
> It reads my dividend was garnished, the crime denied me of 2018, 2020, 2021 dividends due to Covid, and date of offence was on 6/06/19. Dividend has been being used as a way to trap me year after year when they are not to be used to keep incarserating, harrising, and violating our rights + on day of sentencing there was no fine but it had been taking out of previous dividends + there is fraud in the system of garnishing …[[5]]

In her testimony, Ms. C. did not dispute the Department of Corrections record showing that she was incarcerated on September 30, 2021 on a misdemeanor conviction, nor did she dispute that she was convicted of felony theft in 2016. However, she argued that she received an SIS on the felony theft conviction and had successfully completed the conditions of the SIS, so the felony should no longer be on her record. She also complained about the garnishment of her PFDs for prior years for court-imposed fines that she alleged were never really ordered by the judge in her criminal cases, suggesting that her PFDs had been fraudulently garnished.

Ms. C. agreed to provide documents after the hearing to confirm that she had received an SIS on the felony conviction and had successfully fulfilled the conditions of the SIS, and the record was kept open to March 20, 2023 to allow time for her to do so. The administrative law judge (ALJ) also stated that he would research prior PFD decisions on the question of whether a person receiving a felony conviction imposed with an SIS can be found eligible for a PFD.

On March 13, 2023 Ms. C. submitted a copy of a letter from her probation officer, in reference to case number 3PA-15-00000CR, stating that it served "as official notification

[4] Division Exh. 5.
[5] Division Exh. 8, p. 3.

that your probation supervision has expired" and that she was released from probation supervision, but providing no other comment about her felony conviction.[6]

III. Discussion

As a threshold matter, the issue to be decided in this case is whether or not Ms. C. is eligible for the 2022 PFD. Issues concerning her allegations regarding garnishment of prior year PFDs for recoupment of fines or charges imposed by the Court System, and her related assertions regarding alleged fraud connected with those garnishments, are beyond the scope of this hearing.

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.[7]

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
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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
>
> ***
>
> (B) misdemeanor if the individual has been convicted of
>
> (i) felony; or
>
> (ii) two of more prior misdemeanors as defined in AS 11.81.900.

Ms. C. does not dispute that she was incarcerated in 2021, the qualifying year for the 2022 PFD. Instead, she argues that because she received an SIS, her felony conviction should have been expunged from her record, and therefore her incarceration in 2021 should not prevent her from being eligible for the PFD. However, when given the opportunity to submit proof of her SIS and expungement of her felony conviction, Ms. C. provided a letter that said nothing about an SIS and only confirmed she had completed probation in her felony case, number 3PA-15-00000CR.

Regardless of whether Ms. C. received an SIS and completed its terms, however, the administrative law judge's research after the hearing shows that even if an appellant proves that they received an SIS and completed its terms and conditions, the fact that they were

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6 August 24, 2018 letter from Probation Officer II James Homme to Ms. C., admitted as Exhibit A.

7 15 AAC 05.030(h).

convicted of the felony means they will be found ineligible for a PFD under AS 43.23.005(d)(2)(B). An SIS allows a court to impose a term of probation but otherwise defer sentencing after a defendant is convicted, and if the person successfully completes the probation, no other sentence will be imposed and the conviction itself can be "set aside" by the court.[8] However, an SIS does not entitle a person to have the conviction "expunged" from their record.[9] A felony conviction remains in place after completion of the SIS and continues to be a disqualifying factor under AS 43.23.005(d)(2)(B). This result has been reached and confirmed in prior PFD eligibility decisions issued by the Commissioner of Revenue.[10]

IV. Conclusion

Ms. C. was incarcerated for a misdemeanor conviction in 2021, the qualifying year for the 2022 PFD; and she was convicted of a felony in 2016. Therefore, she was properly found ineligible for the 2022 PFD. The Division's determination to that effect is hereby AFFIRMED.

DATED: March 23, 2023.

SIGNED
Andrew M. Lebo
Administrative Law Judge

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8 AS 12.55.085.

9 *Journey v. Alaska*, 895 P.2d 955 (Alaska 1995).

10 *In the Matter of C.D.,* OAH No. 09-0121-PFD; *see also In the Matter of X J.C.III,* OAH No. 18-1307-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 17th day of April, 2023.

By: SIGNED
Signature
Andrew M. Lebo
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.]