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

In the Matter of	)	
	)	
M. E. J.	)	OAH No. 23-0095-PFD
	)	

DECISION

I. Introduction

The Permanent Fund Dividend Division denied M. J.'s application for a 2022 Alaska Permanent Fund Dividend (PFD) because he was incarcerated for a misdemeanor conviction during the 2021 qualifying year, after having been convicted of prior felony. Mr. J. appealed and requested a formal hearing by correspondence. Because the evidence shows he was indeed incarcerated during a portion of the 2021 calendar year, the Division's denial of Mr. J.'s application is affirmed.

II. Facts

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

In October 2020, Mr. J. was convicted of a Class A misdemeanor in Case No. 4FA-20-00000CR.[1] The undisputed evidence, as documented by the Department of Corrections in a Corrections Identification Verification Form, shows that Mr. J. was incarcerated for that conviction from January 11, 2021 to January 21, 2021. In 2010, Mr. J. was convicted of a felony in Case No. 4FA-10-00000CR.[2]

After the PFD Division denied Mr. J.'s application for a 2022 dividend and held to its position through an informal appeal, Mr. J. requested a formal hearing. He checked the box on the hearing request 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.[3] The parties were given until March 10, 2023 to submit these materials, and until March 24, 2023 to respond to any information received by the other. The division filed a position statement and hearing exhibits, to which Mr. J. responded.

---

1 The misdemeanor conviction was for driving with a license that had been canceled, revoked, or suspended following the entry of a guilty plea. Ex. 8, pp. 5 and 22-24.

2 The felony conviction was for driving under the influence. Ex. 8, p. 5.

3 Ex. 7.

III. Discussion

This case is governed by AS 43.23.005(d)(2)(B)(i), which states in relevant part:

> (d) . . . 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) a prior felony as defined in AS 11.81.900;

The qualifying year for a 2022 PFD was 2021.[4] Mr. J. was convicted of a felony in 2010, which was before the 2021 qualifying year. Thus, under the statute above, if Mr. J. was incarcerated during any portion of the 2021 qualifying year as a result of a misdemeanor conviction, he would not be eligible for a 2022 PFD - even if the conviction was before 2021. This is because his eligibility for a PFD turns on whether the <u>incarceration</u>, not the arrest or conviction, occurred in 2021.

Mr. J. was convicted of a misdemeanor in October 2020. As a consequence, he was incarcerated from January 11 to January 21, 2021. Thus, even though Mr. J. contends he "was not in trouble last year," his period of incarceration during the 2021 qualifying year, coupled with his prior felony conviction, disqualified him for a 2022 PFD.

Mr. J. further argued that denying him a 2022 PFD would subject him to "double jeopardy," stating, "I already did my time and paid my dues." But the Alaska Supreme Court already considered and rejected this argument in *Hertz v. Storer*. The Court stated:

> Appellant argues that the denial of his 1993 PFD subjects him to double jeopardy since it is a separate punishment in addition to his sentence of 40 years for murder. In *Anthony II*, the Alaska Supreme Court found that denial of a PFD [under] AS 43.23.005(d) was not a criminal punishment for purposes of the ex post facto clause. It follows that appellant's argument that he is being subjected to increased punishment, and therefore, to double jeopardy, is invalid.[5]

Thus, the denial of Mr. J.'s 2022 PFD is not a punitive action that constitutes double jeopardy for the criminal act resulting in his incarceration during a portion of 2021.

Finally, Mr. J. asserted that he had made many improvements in his lifestyle, but he has significant health issues and family responsibilities for which he could really use the PFD. While Mr.

---

[4] AS 43.23.095(6).

[5] *Hertz v. Storer, Dep't of Revenue, Permanent Fund Division*, 943 P.2d 725 (Alaska 1997), referencing *State of Anthony*, 816 P.2d 1377 (Alaska 1991).

J.'s positive lifestyle changes are commendable, the Division is obligated by law to apply AS 43.23.005 as it is written. Administrative agencies are bound by the laws and regulations, just as the public is bound by them.[6] The statute as written compels the outcome here.

IV. Conclusion

Because Mr. J. was incarcerated during a portion of 2021 as a result of a misdemeanor conviction after having been convicted of a prior felony, the Division's denial of Mr. J.'s 2022 PFD application is AFFIRMED.

Dated: March 28, 2023

SIGNED
Lisa M. Toussaint
Administrative Law Judge

[6] *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868-869 (Alaska 2010).

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 10th 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.]