

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

|                  |   |                     |
|------------------|---|---------------------|
| In the Matter of | ) |                     |
|                  | ) |                     |
| E. H.            | ) | OAH No. 23-0175-PFD |
| _____            | ) |                     |

**DECISION**

**I. Introduction**

E. H.’s application for a 2022 Permanent Fund Dividend (PFD) was denied because the PFD Division determined he had been incarcerated during the qualifying year under circumstances that would render him ineligible. Following an unsuccessful informal appeal, Mr. H. requested a formal hearing by correspondence before this tribunal.

The Division’s denial of Mr. H.’s application is affirmed because Mr. H. was incarcerated during the qualifying year of 2021 for a felony conviction. This disqualifies him from receiving the 2022 dividend.

**II. Facts**

E. H. timely applied for a 2022 PFD.<sup>1</sup> There are no issues regarding his eligibility apart from his incarceration during the preceding year.

Mr. H. was convicted of a felony and sentenced on 00/00/2021 in Alaska Superior Court Case No. 3AN-16-0000CR.<sup>2</sup> He had been incarcerated in 2021 in that case prior to his conviction and was incarcerated thereafter based upon that conviction in 2021.<sup>3</sup> His sentence runs until 2053.<sup>4</sup>

After the PFD Division denied his application for a 2022 dividend and held to that position throughout the informal appeal process, Mr. H. initiated a formal appeal. He checked the box on the Request for Formal Hearing form indicating a preference for a hearing by written correspondence only.<sup>5</sup>

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<sup>1</sup> Ex. 1, pp. 1 – 4.  
<sup>2</sup> Ex. 4, pp. 1 – 2.  
<sup>3</sup> Ex. 4, p. 3.  
<sup>4</sup> Ex. 4, p. 3.  
<sup>5</sup> Ex. 6, p. 1.

By notice dated March 10, 2023, Mr. H. and the Division were given until April 17, 2023 to send any additional documents or correspondence to the Office of Administrative Hearings for consideration. The Division filed a position statement. Mr. H. did not submit anything. Mr. H. had until May 1, 2023 to respond to the Division’s filing, but did not file a response.

### **III. Discussion**

The Alaska legislature has directed that “an individual is not eligible for a permanent fund dividend for a dividend year when . . . during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a . . . felony; . . . .”<sup>6</sup> In enacting this provision, the legislature made the lookback period for prior convictions extend back to January 1, 1997.<sup>7</sup> Mr. H. was convicted more recently than that.

The “Request for Formal Hearing” form completed by Mr. H. denies that he was incarcerated in 2021 as a result of a felony conviction, stating, among other things that he “identified as a law-abiding citizen for all of 2021,” that he “identif[ied] as being on vacation,” and that he should receive \$33,277.71 in reparations, that he should receive a “sincere hand written letter of apology,” and that Corrections and Public Safety should enroll in a “h[ate] week ‘sensitivity’ training class.”<sup>8</sup> These assertions are insufficient to controvert the evidence in this case, which shows that Mr. H. spent at least a portion of 2021, and possibly the entire year incarcerated due to his felony conviction in 2021. The qualifying year for a 2022 dividend was 2021.<sup>9</sup> Because Mr. H. was incarcerated in 2021 due to a felony conviction, he is ineligible for a 2022 dividend.

Mr. H., however, should be aware that if his criminal conviction is under appeal, that a Department of Revenue regulation provides that *if* a court reverses or vacates the conviction that led to a disqualifying incarceration, the applicant can file a new appeal with the Department within 60 days of obtaining that result in the court system.<sup>10</sup> Unless and until that occurs, however, Mr. H. is ineligible for the 2022 dividend.

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### **IV. Conclusion**

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<sup>6</sup> AS 43.23.005(d).  
<sup>7</sup> Sec. 6, ch. 46, SLA 1996.  
<sup>8</sup> Ex. 6, p. 2.  
<sup>9</sup> AS 43.23.095(6).  
<sup>10</sup> 15 AAC 23.183(b).

Mr. H.'s incarceration during 2021 due to his felony conviction disqualifies him from being eligible for a 2022 PFD. Therefore, the decision of the Permanent Fund Dividend Division to deny his application for a 2022 Permanent Fund Dividend is AFFIRMED.

Dated: May 16, 2023

SIGNED  
Lawrence A. Pederson  
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 9th day of June, 2023.

By: SIGNED

Signature

Lawrence A. Pederson

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.]