

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

|                  |   |                     |
|------------------|---|---------------------|
| In the Matter of | ) |                     |
|                  | ) |                     |
| S.B III          | ) | OAH No. 21-2484-PFD |
| _____            | ) |                     |

**DECISION**

**I. Introduction**

S.B III filed a timely application for the 2021 Permanent Fund dividend (PFD). The Permanent Fund Dividend Division (Division) denied Mr. B’s application, and Mr. B appealed. The matter was referred to the Office of Administrative Hearings for a hearing by correspondence.

Because Mr. B was incarcerated for part of 2020 as a result of a misdemeanor conviction and had two or more prior misdemeanor convictions, he is not eligible to receive a 2021 dividend. The Division’s decision is, therefore, AFFIRMED.

**II. Facts**

Mr. B applied for a 2021 PFD.<sup>1</sup> Citing information received from the Alaska Department of Corrections (Department), the Division denied the application on August 20, 2021, finding that Mr. B was not eligible because he had been incarcerated during all or part of 2020 because he had been convicted of a felony.<sup>2</sup> Mr. B filed a Request for Informal Appeal which the Division received on September 3, 2021.<sup>3</sup> In that Request, Mr. B stated that he had “not been arrested in five years” and that he “was not incarcerated in 2020, or 2021.” He further noted that although he had a prior felony conviction, that conviction had occurred 30 years ago.<sup>4</sup>

The Division’s Appeals section contacted the Department to verify the accuracy of the convictions under which Mr. B had been incarcerated during 2020.<sup>5</sup> The Department then advised the Division that it had incorrectly identified Mr. B as having been had been incarcerated

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2. Although that denial was based on the Department’s erroneously statement that Mr. B had been incarcerated for a felony conviction, the Division in its August 20, 2021 denial letter requested information from Mr. B showing that he was not incarcerated in 2020 as the result of a felony conviction, a felony probation or parole violation *and/or was not incarcerated due to a disqualifying misdemeanor*. See Exh. 2, p. 1 (emphasis added).

<sup>3</sup> Exh. 3, p. 1.

<sup>4</sup> Exh. 3, p. 2.

<sup>5</sup> Division’s Position Statement, pp. 1-2.

sometime during calendar year 2020 as a result of a felony conviction.<sup>6</sup> Instead, Mr. B had been incarcerated during part of calendar year 2020 as a result of a misdemeanor conviction in Alaska after been convicted of two or more prior misdemeanors during the period from January 1, 1997 through December 31, 2020.<sup>7</sup> The Department identified three misdemeanor offenses involving Mr. B: December 2019 (2NO-19-00000-CR), April 2012 (2NO-12-0000-CR), and July 2010 (2NO-10-0000-CR).

As a result of the December 2019 conviction, Mr. B was incarcerated for 90 days, with his incarceration ending on February 9, 2020.<sup>8</sup> Based on information from the Department confirming that Mr. B had been incarcerated during part of 2020 and that he had two prior misdemeanor convictions, the Division upheld its decision.<sup>9</sup> Mr. B then filed a Request for Formal Hearing. In that Request, Mr. B stated that he was “not incarcerated in 2020 or 2019 or 2021” and that he “had not been to jail for five years.”<sup>10</sup>

### **III. Discussion**

Under AS 43.23.005(d)(2)(B), an individual is ineligible for a PFD if during the qualifying year, “the individual was incarcerated as a result of a conviction in this state of a . . . misdemeanor if the individual has been convicted of . . . (ii) two or more prior misdemeanors as defined in AS 11.81.900.”<sup>11</sup> Alaska Statute 11.81.900 counts prior convictions for criminal offenses committed on or after January 1, 1997.<sup>12</sup>

The qualifying year for the 2021 dividend was 2020.<sup>13</sup> Mr. B has stated that he has not been arrested in five years and that he was not incarcerated in 2020.<sup>14</sup> However, the Department’s records show the opposite. First, the Department’s records show that he was incarcerated during part of 2020 as a result of a conviction in Alaska of a misdemeanor, and that he had been convicted of two prior misdemeanors.<sup>15</sup> Second, the Department’s records are corroborated by the court file in 2NO-19-00000CR, which shows that Mr. B was in custody as of

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<sup>6</sup> Exh. 4, p. 2.

<sup>7</sup> Exh. 4, p. 1.

<sup>8</sup> Exh. 4, p. 2.

<sup>9</sup> Exh. 5.

<sup>10</sup> Exh. 6, p. 2.

<sup>11</sup> Exh. 5, p. 3.

<sup>12</sup> Sec. 6 ch. 46 SLA 1996.

<sup>13</sup> AS 43.23.295(6).

<sup>14</sup> See Exh. 3, p.2; Exh. 6, p. 2.

<sup>15</sup> Exh. 4, p. 1.

December 13, 2019, was sentenced to 90 days in jail on December 16, 2019 and was to report immediately to the Correction Center A.<sup>16</sup>

As the individual challenging the Division's decision, it is Mr. B's burden to establish that it is more likely than not that he is eligible for a 2020 PFD. Mr. B has failed to meet his burden.<sup>17</sup> The weight of the evidence shows that Mr. B was incarcerated for part of 2020, and that incarceration coupled with two prior misdemeanor convictions disqualifies him from receiving a 2021 PFD.

#### **IV. Conclusion**

Mr. B is not eligible to receive a 2021 PFD because he was incarcerated for part of the qualifying year (2020) as the result of an Alaska misdemeanor conviction, and he had two or more prior misdemeanor convictions since January 1, 1997. The decision of the Division is **AFFIRMED**.

Dated: March 14, 2022

*Signed*

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Kathleen A. Frederick  
Administrative Law Judge

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<sup>16</sup> See Exh. 7, pp. 2, 7 & 8.

<sup>17</sup> Mr. B's assertions in his request for an informal appeal and for a formal appeal that he served no jail time in 2020 were flatly contradicted by additional information subsequently provided by the Department and from the court records for Mr. B's 2019 criminal case. Compare Exh. 3, p. 2 & Exh.6, p. 2 with Exh. 4, p. 1 & Exh. 7.

## Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 7<sup>th</sup> day of April, 2022.

By: Signed  
Name: Kathleen A. Fredrick  
Title: Administrative Law Judge

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