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

In the Matter of	)	
	)	
N. P.	)	OAH No. 20-0081-PFD
	)	

REVISED DECISION[1]

I. Introduction

N. P. was found ineligible for the 2019 Permanent Fund Dividend (PFD) because the PFD Division (Division) determined that he was incarcerated for a misdemeanor conviction in 2018, the qualifying year, after having been convicted of at least two prior misdemeanors. Mr. P. appealed. He did not dispute the prior convictions, but he argued that he was not incarcerated in 2018 as he served his time for the disqualifying misdemeanor conviction on ankle monitor.

The telephonic hearing in this matter was held on March 2, 2020. Mr. P. participated and represented himself, while the Division was represented by PFD Specialist Peter Scott. After reviewing the evidence and listening to the testimony offered by the parties, the Division's decision is affirmed. The denial is upheld because Mr. P. was convicted of at least two prior misdemeanors, and as a result of a 2017 misdemeanor conviction he was incarcerated in 2018.

II. Material Facts

Mr. P. is a sixty-five-year-old Alaskan resident who has received the PFD inconsistently for over thirty years.[2] In 2019 he timely applied for a 2018 PFD. There are no issues regarding his eligibility apart from his confinement during the qualifying year.

During the hearing the parties agreed on the material facts of the case. Mr. P. was convicted of prior misdemeanors in 2009, 2013 and 2017 with court case numbers 4FA-09-00000CR and 4FA-13-00000CR and 4FA-17-00000CR respectively.[3] On November 24, 2017 he was convicted of a misdemeanor Driving Under the Influence (DUI) under

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[1] This decision was inadvertently issued on March 19, 2020 with a small typographical error. It has been corrected; the holding remains unchanged.

[2] Ex. 1, p. 5.

[3] Ex. 4, p. 2.

AS 28.35.030(a) with court case number 4FA-17-00000CR.[4] Judge N. MacDonald of the Fairbanks Superior Court sentenced him to one year flat.[5]

After Mr. P.'s 2019 PFD application was ultimately denied by the Division under AS 43.23.005(d)(2)(B)(ii) on January 10, 2020, this appeal to the Office of Administrative Hearings followed.[6]

III. Discussion

Under Alaska law, the person appealing a PFD denial has the burden of proving, by a preponderance of the evidence, that the denial was incorrect.[7] Mr. P.'s primary argument on appeal is that as he served time for his 2017 misdemeanor conviction on ankle monitor, not in jail, he should still be eligible for the 2019 dividend under the statute.

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…misdemeanor if the individual has been convicted of…(i) a prior felony as defined in AS 11.81.900; or (ii) two or more prior misdemeanors as defined in AS 11.81.900."[8] The qualifying year for a 2019 dividend was 2018.[9] Mr. P. was convicted of at least two misdemeanors prior to that year.[10]

Mr. P. was on ankle monitor while out on release on the misdemeanor DUI charge with case number 4FA-17-00000CR for over a month in 2017.[11] However, the docket for this case indicates that Mr. P. was taken off ankle monitoring and was remanded to jail on November 22, 2017, the day he changed his plea, to serve his one year sentence.[12] It follows, therefore, that he was still incarcerated in 2018, completing his sentence. As he has

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4 Ex. 10, pp. 2-3.
5 *Id.*
6 Ex. 5, pp. 1-2.
7 15 AAC 05.030(h).
8 AS 43.23.005(d).
9 AS 43.23.095(6).
10 Ex. 4, p. 2.
11 In the past, individuals on DOC sponsored ankle monitoring were still considered "incarcerated" for the purposes of the statute for reasons that included DOC wanting to defray the cost of the program. See *In the Matter of* S O E III, OAH No. 13-0107-PFD (Dept. of Revenue 2013). In Mr. P.'s case, however, he was being monitored by a private company. The question of whether private monitoring would qualify as incarceration need not be reached, however, as he was in conventional confinement in 2018.
12 Criminal cases can easily be referenced through Courtview, a public electronic database of cases filed with the Alaska courts, which can be found at https://records.courts.alaska.gov/eaccess/home.page.6.

at least two prior disqualifying misdemeanors, he has not shown by a preponderance of the evidence that he should receive the 2019 PFD.

Finally, in his appeal Mr. P. asked that his 2019 dividend be applied toward his court fines. As his 2019 PFD was properly denied, this issue will not be addressed.

IV. Conclusion

In 2018 Mr. P. was convicted of a misdemeanor after having been convicted of at least two prior misdemeanors. This resulted in his being incarcerated in 2018, which disqualifies him from receiving a 2019 PFD. The decision of the Permanent Fund Dividend to deny the application of N. P. for a 2019 dividend is AFFIRMED.

Dated: March 23, 2020

SIGNED
Danika B. Swanson
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 14th day of April, 2020.

By: SIGNED
Signature
Stephen C Slotnick, AJL for: Danika B. Swanson
Name
Administrative Law Judge
Title

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