

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

In the Matter of :)	
)	
K L)	
)	OAH No. 06-0572-PFD
<u>2005 Alaska Permanent Fund dividend</u>)	DOR No. 2005615482

DECISION and ORDER

I. Introduction

K L filed a timely application for a 2005 Alaska Permanent Fund dividend. The Permanent Fund Division denied the application. Ms. L filed a timely appeal and requested a hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on October 13, 2006. Ms. L appeared on her own behalf, and Ms. Susan Lutz represented the division.

Because Ms. L provided intentionally deceptive information on her application, the division's decision is affirmed.

II. Facts

K L is 27 years old and is a permanent resident alien under federal law. Ms. L moved to Alaska in November, 2003. She moved in with her parents and began working in Anchorage. She was a resident of Alaska throughout the qualifying year for the 2005 Alaska Permanent Fund dividend, and through the date of her application.¹

On February 28, 2005,² Ms. L left the state to visit her children in Texas. She returned on March 30, 2005.³ While in Texas, on Marcy 12, 2005, Ms. L filed an online application for a 2005 Alaska Permanent Fund dividend. On the application, Ms. L responded "yes" to the question "Are you in Alaska today?"⁴ and "no" to the question "Are you currently absent from or living outside of Alaska today?" While still in Texas, on March 25, 2005, Ms. L completed a

¹ At the hearing, the division conceded Ms. L's residency for purposes of the 2005 dividend.

² Ex. 7, p. 1.

³ Ex. 7, p. 3.

⁴ Ex. 1, p. 1 (Q1).

paper application. On that paper application, Ms. L responded “yes” to the question “Are you in Alaska today?”⁵

III. Discussion

15 AAC 23.103(j) provides that the division “will deny an application if...an individual has intentionally provided deceptive information.”

There is no dispute that the information provided by Ms. L was deceptive: in fact, it was false. But denial of a dividend on the basis of 15 AAC 23.103(j) requires more than the provision of deceptive information. Under the regulation, the individual must submit the information with the intent to deceive the division regarding facts relevant to the determination of eligibility. An applicant’s location on the date of an initial application for a dividend is relevant to the determination of eligibility. Thus, the issue in this case is whether Ms. L submitted the deceptive information inadvertently, or with the intent to deceive the division regarding her location on the date she completed the application.

Ms. L testified that she wears corrective lenses and that English is her second language. She stated that she misunderstood the questions that she had answered incorrectly. The division argued that Ms. L intended to deceive the division about her whereabouts, noting that Ms. L provided false responses to three separate questions, all of which were (in the division’s view) easy to understand.

On balance, the preponderance of the evidence supports the division’s view. Under the circumstances of this case, Ms. L’s eligibility could well have been questioned, since she was living with her parents in Alaska while her children lived in Texas. Ms. L, accordingly, had a motive to conceal any facts that might have placed her eligibility in dispute. While Ms. L testified that English is her second language, her testimony at the hearing demonstrated a reasonable degree of fluency. The question “Are you in Alaska today?” is not complicated or difficult to understand. In that light, Ms. L’s false response to three separate questions appears not to have been unintentional or inadvertent.

⁵ Ex. 1, p. 3 (#2). Ms. L also submitted a paper supplemental schedule, responding “no” to the question “Are you currently absent from or living outside of Alaska today?” Ex. 2, p.3. However, that paper supplemental schedule was apparently submitted on July 28, 2005, after she had returned to Alaska, in response to a request from the division. See Ex. 2, pp. 1, 3.

IV. Conclusion

Ms. L intentionally provided deceptive information and is ineligible for the 2005 Alaska Permanent Fund dividend under 15 AAC 23.103(j).

V. Order

The division’s denial of K L’s application for a 2005 Alaska Permanent Fund dividend is AFFIRMED.

DATED December 20, 2006

Signed

Andrew M. Hemenway
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 and Order 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 January, 2007.

By: Signed

Signature
Andrew M. Hemenway

Name
Administrative Law Judge

Title

[This document has been modified to conform to the technical standards for publication.]