

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

In the Matter of)	
)	
G. M. and)	
J. P.)	
)	
<u>2007 Permanent Fund Dividends</u>)	OAH No. 08-0417-PFD Agency No. 2007-022-1784

DECISION & ORDER

I. Introduction

G. M. and J. P. made timely on-line applications for the 2007 Permanent Fund Dividend (PFD), submitting their applications from an out-of-state computer. After an audit of their applications, the Permanent Fund Dividend Division found them ineligible, and it held to this view through the informal appeal process. The basis for the denials was essentially twofold: first, the division believed the applicants had improperly concealed their location at the time they submitted their applications, and second, the division believed that they had made inaccurate answers that concealed reportable absences of over 90 days during the qualifying year.

A formal hearing took place on October 28, 2008, with Mr. M. and Ms. P. both in attendance and both represented by attorney Ken Jacobus. Exhibits 1 through 8 and A through D were admitted without objection. The evidence at the formal hearing showed that the dividends should be paid.

II. Facts¹

G. F. M. and J. R. P. are long-term domestic partners who have lived in Alaska for many years.² Their Alaska residency is uncontested.³ It is also uncontested that had all of the questions on their PFD applications been answered accurately, the couple would have been eligible for 2007 dividends.

¹ The only testimony offered at the brief hearing was that of Mr. M. and Ms. P. All facts found below are based wholly or in part on that testimony; when there is an additional documentary source, it has been cited in a footnote.

² Exhibit 3, pp. 2, 10.

³ Division's Formal Hearing Position Statement, p. 1.

In 2006, G. M. and J. P. had several short absences from Alaska for vacation, training, family care, and a funeral; these totaled about 39 days for Mr. M. and 62 days for Ms. P..⁴ In addition, each of them spent the last 71 days of 2006 in Arizona caring for Ms. P.'s mother, who was then in her final illness. They remained in Arizona or in transit until February 13, 2007, when they reentered Alaska by car. Ms. P.'s mother subsequently came to Alaska to join them and died soon afterward.

Prior to the extended absence in Arizona, Mr. M. visited the PFD office in Anchorage and inquired about the effect of the absence on his PFD eligibility. He seems to have been told—accurately—something to the effect that an absence to provide care for a terminally ill family member, regardless of length, would not usually disqualify a person from a dividend.⁵

Ms. P. and Mr. M. applied for their PFDs on line on January 20 and 22, 2007, respectively,⁶ using a computer in Arizona. Ms. P. had the idea to apply on line. There was no particular reason to apply from Arizona rather than wait and until they returned to Alaska, but a computer was available and it seemed convenient to use it. This case turns on two answers the couple gave to questions in the on-line application.

Question 2 of the on-line application used in 2007 asked “Are you physically in Alaska today?”⁷ Question 3 asked “During 2006, were you gone from Alaska more than 90 days total?”⁸ A person selecting a “yes” answer to these questions would be directed to screens with additional questions about presence and absence from Alaska, but the link to additional questions would not be apparent to an on-line applicant until after he or she made the selection. Applicants selecting “no” skipped those additional screens.

Ms. P. and Mr. M. selected “no” answers for both questions. These answers were incorrect because the applicants were not physically in Alaska at the time and because their total time outside the state in 2006, when one includes trips of all types, exceeded 90 days.⁹

⁴ See Exhibit 3, pp. 3, 9.

⁵ The division has sometimes appeared to misunderstand Mr. M.'s claim regarding his conversation with its staff. Mr. M. does not claim that he was told not to report the absence on his application. His description is consistent with an unremarkable conversation about the substantive effect his anticipated absence would have on his eligibility.

⁶ Exhibit 1, pp. 1-2.

⁷ Exhibit 8, p. 3.

⁸ *Id.* As submitted to the record in this case, the on-line application seems to lack the warning seen on paper applications that “Failure to disclose absences” could result in denial. Though the lack of this warning is not central to this case, it is one of several differences between this case and *In re M.J., et al.*, OAH No. 08-0288-PFD (Dept. of Revenue 2008).

⁹ Mr. M. spent about 110 days outside the state and Ms. P. about 133.

Ms. P. and Mr. M. testify that they discussed Question 2 when Ms. P. encountered it on her application. They say they were puzzled by the question because they did not think it would be relevant where they were at the moment of application; based on the other questions on PFD applications they had encountered over the years, they believed the question must be aimed at where their home or belongings were physically located. Based on their demeanor and the manner in which they explain their thought process, their testimony about this belief is credible—that is, it seems somewhat more likely than not that the testimony is truthful. Mr. M. and Ms. P. acknowledge that they were mistaken, or even foolish, to interpret the question that way.

When it came to Question 3, Mr. M. explains that he erroneously thought that since he had been told an absence to care for a terminally ill relative was allowable, it did not “count” in terms of determining whether one had been out of the state more than 90 days. In any event, he recalls passing this belief on to Ms. P., telling her that she should answer “no” to the question. Again, the testimony is credible.

The PFD Division was able to determine that the Internet Service Provider (ISP) through which the applications were submitted was not an Alaska ISP, and this triggered an audit of the applications prior to payment.¹⁰ The applicants cooperated with the audit, admitting absences that would not otherwise have been known to the division and providing detailed information about them.¹¹ The division denied the dividends on the basis that the applicants had “intentionally provided deceptive information” in their applications.¹² The denial remained unchanged through the informal appeal process, and this formal appeal followed.

III. Discussion

It is important to the integrity of the PFD program that answers given on PFD applications be accurate. The application asks about current location and about absences totaling more than 90 days so that the PFD Division can evaluate circumstances that may affect residence or eligibility. Those who do not report their location or their absences interfere with the division’s ability to perform this task.

The Department of Revenue has provided by regulation that it “will deny an application if the department determines that an individual has intentionally provided deceptive information

¹⁰ Exhibit 2.

¹¹ Exhibit 3.

¹² 15 AAC 23.103(j), cited in denial letters (Exhibit 4).

such as failing to disclose a reportable absence to the department.”¹³ The answers Mr. M. and Ms. P. gave to Questions 2 and 3 were inaccurate and thus deceptive to the division.

The Department of Revenue regulation regarding deceptive information on applications authorizes denial only when the deception has been found intentional, however.¹⁴ In the case of these applicants, as discussed above, there has been a credible showing that they had neither the motive nor intent to deceive; rather, they misconstrued the questions.

IV. Conclusion

Since there was no intentional deception in Mr. M.’s or Ms. P.’s 2007 applications, and since both applicants were otherwise fully eligible for the 2007 dividend even after the inaccuracies on their applications were corrected, there is no basis to deny them dividends on the present record. This decision does not suggest that the division was wrong to deny the dividends at the initial and informal appeal stages; it addresses only the decision that is appropriate on the basis of the more complete record assembled in the formal hearing.

V. Order

IT IS HEREBY ORDERED that:

- (1) the decision of the Permanent Fund Dividend Division to deny the applications of G. F. M. and J. R. P. for 2007 Permanent Fund Dividends is REVERSED;
- (2) the applications of G. F. M. and J. R. P. for 2007 Permanent Fund Dividends shall be GRANTED.

DATED this 30th day of October, 2008.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

¹³ 15 AAC 23.103(j).

¹⁴ *Id.*

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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of November, 2008.

By: Signed
Signature
Christopher Kennedy
Name
[Commissioner's Delegee]
Title

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