

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

In the Matter of:	)	
	)	
T W	)	OAH No. 13-1647-PFD
	)	PFD No. 2012-061-8971
<u>PFD Year 2012</u>	)	

**Decision**

**I. Introduction**

T W was gone from Alaska for more than 90 days in 2011 and was absent from Alaska when she filed her 2012 Permanent Fund Dividend application. The application, however, stated that she was in Alaska when she filled out the application and that she was not gone from Alaska for more than 90 days in 2011. After first paying the 2012 PFD, the Permanent Fund Dividend Division investigated Ms. W's eligibility, and issued a retroactive denial of her 2012 PFD. Because the evidence supports an inference that Ms. W provided intentionally deceptive information in an application, the Division's decision is affirmed.

**II. Facts**

T W is a long-term resident of Alaska who has received a PFD every year since 1982. In 2011, Ms. W's mother, who lives in Arizona, became very ill. On July 10, 2011, Ms. W went to Arizona to take care of her mother.<sup>1</sup> Ms. W was worried that her mother might not survive, and the situation was very stressful for her.<sup>2</sup> Eventually, however, Ms. W's mother turned the corner, and on May 17, 2012, Ms. W returned to Alaska.<sup>3</sup>

On March 16, 2012, while she was in Arizona, Ms. W filled out her application for a 2012 PFD.<sup>4</sup> She had left her home in the care of a housesitter, and the housesitter had mailed her a hard copy of the application.<sup>5</sup> She returned the application to her housesitter, and the housesitter either hand-delivered or mailed (from an Alaskan location) the application to the Division.<sup>6</sup>

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<sup>1</sup> Division Position Statement at 2 (citing Division Exhibit 8); W testimony.

<sup>2</sup> W testimony.

<sup>3</sup> W Exhibit (boarding pass).

<sup>4</sup> W testimony.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Question 2 on the application asks, “Are you physically present in Alaska today?”<sup>7</sup> The application advises the applicant to “[a]nswer NO if you are completing this application or mailing this application from some place other than within Alaska.”<sup>8</sup> It instructs the applicant that “[i]f NO, complete Question 8 on the back of this form and attach **Parts B & C of the Adult Supplemental Schedule.**”<sup>9</sup> Ms. W answered “yes” to Question 2. She did not complete Question 8, which asked for the dates of, and reasons for, the absences, or attach the Adult Supplemental Schedule.

Question 3 asks “[d]uring 2011, were you gone from Alaska for more than 90 days total?” Question 3 also instructs the applicant to answer Question 8 and attach parts B and C of the Adult Supplemental Schedule. Ms. W answered “No” to Question 3. Based on the answers in the application, Ms. W was deemed eligible for the 2012 PFD, and \$878 was directly deposited into her bank account.

The Department of Revenue Criminal Investigation Unit then received a tip that Ms. W’s application was inaccurate, and, after investigation, determined that the application did contain inaccurate answers. The Unit also determined, however, that criminal prosecution was not appropriate for this case, and referred the matter back to the Division for administrative action against Ms. W.<sup>10</sup> The Division determined that Ms. W’s act of providing incorrect information on the 2012 application made her ineligible for the 2012 dividend, and on May 13, 2013, issued a Denial and Assessment Letter for the 2012 PFD.<sup>11</sup>

Ms. W filed an informal appeal request with the Division. The Division contacted Ms. W, and requested additional information. The Division confirmed that Ms. W was absent from Alaska for 174 days in 2011. On October 1, 2013, the Division affirmed the denial, finding that Ms. W “provided intentionally deceptive information,” and “willfully misrepresented, exercised gross negligence with respect to, or recklessly disregarded material facts pertaining to her eligibility for the 2012 Permanent Fund Dividend.”<sup>12</sup> Ms. W filed a timely request for a formal hearing.<sup>13</sup>

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<sup>7</sup> Division Exhibit 1 at 1.

<sup>8</sup> *Id.* (capitalization in original).

<sup>9</sup> *Id.* (capitalization, italicizing, and bolding in original).

<sup>10</sup> Division Position Statement at 2.

<sup>11</sup> Division Exhibit 4.

<sup>12</sup> Division Exhibit 10.

<sup>13</sup> Division Exhibit 11.

A formal hearing was held on December 19, 2013. Ms. W represented herself, and appeared in person. PFD Specialist I Bethany Thorsteinson represented the Division, and appeared by telephone. At the hearing, Ms. W explained that she simply made a mistake on her application. She stated that she never intended to deceive anyone, and that it was a very stressful time for her. She explained that she was confused by Question 8, which provided a list of allowable absences that included travelling out of state to accompany a sick relative, but did not provide a code for travelling out of state to take care of a sick relative who was living in the lower 48.

### **III. Discussion**

Under the regulations that govern the PFD program, “[t]he department will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department.”<sup>14</sup> Here, Ms. W failed to disclose a reportable absence. She also provided deceptive information when she stated that she was physically present in Alaska when she filled out her form. The only question here is whether she intended to provide deceptive information.

Ms. W seemed sincere in her testimony that she simply made a mistake in filling out her form. In adjudicating a case such as this one, however, the task is to draw inferences from the evidence. Here, Ms. W answered two questions incorrectly, and both of these incorrect answers allowed her to avoid answering Question 8 and filling out the supplemental schedule. Having more than one incorrect answer on questions that would raise difficulties for Ms. W supports an inference that the responses were intentional.<sup>15</sup> Her act of mailing her application to her housesitter, instead of directly to the Division, also supports an inference that her providing deceptive information was intentional. This act allowed her to avoid having an out-of-state postmark on her application, which would have brought attention to the application. Under the law, “it is permissible to infer that an accused intends the natural and probable consequences of his or her knowing actions.”<sup>16</sup> Applying that presumption to these facts leads to the conclusion that Ms. W more likely than not intended to avoid complications with her 2012 application. She also more likely than not intended to convince the Division that she was not out of state when she filed her application and that she had not been out of Alaska for more than 90 days in 2011.

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<sup>14</sup> 15 AAC 23.103(j).

<sup>15</sup> See, e.g., *In re K.L.*, OAH No. 06.572-PFD (Comm’r of Revenue 2006).

<sup>16</sup> *In re Disciplinary Matter of Friedman*, 23 P.3d 620, 626 (Alaska 2001).

**IV. Conclusion**

The evidence in this record shows that Ms. W intentionally provided deceptive information in her 2012 application. Therefore, the Division’s decision denying Ms. W’s 2012 PFD is affirmed.

DATED this 15<sup>th</sup> of January, 2014.

By: Signed \_\_\_\_\_  
Stephen C. Slotnick  
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 20<sup>th</sup> day of February, 2014.

By: Signed \_\_\_\_\_  
Signature  
Angela M. Rodell \_\_\_\_\_  
Name  
Commissioner \_\_\_\_\_  
Title

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