

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

In the Matter of)
)
M & L O) OAH No. 16-0590-PFD
) Agency No. 2015-057-7838/7861

DECISION

I. Introduction

M and L O were gone from Alaska more than 90 days in 2014 and were absent from Alaska when they filed their applications for 2015 Permanent Fund Dividends (PFDs). Their applications, however, stated that they were in Alaska when they filed and that they had not been gone from Alaska for more than 90 days in 2014. The Permanent Fund Dividend Division (Division) denied their applications, and the Os pursued informal and formal appeals. Because the evidence supports the conclusion that the Os intentionally provided deceptive information in their applications, the Division’s decision is affirmed.

II. Facts

The Os are long-time residents of Alaska and have received PFDs most years since 2004. When they applied for 2015 PFDs on March 27, 2015, however, they were in California, where Mr. O was recovering from an illness. Mr. O filled out online applications for both himself and Mrs. O. Question 2 on the application asked “[a]re you physically present in Alaska today?”¹ The application advises the applicant to “[a]nswer NO if you are completing this application or mailing this application from someplace other than within Alaska.”² Mr. O answered “yes” to question 2 for both himself and Mrs. O.

Question 3A on the application asked “[d]uring 2014, were you gone from Alaska more than 90 days total?”³ Mr. O answered “no” to question 3 for both himself and Mrs. O.

The Division noted that the Os’ online applications had been filed from an IP (internet protocol) address that indicated the applications had not been filed from within Alaska. As a result, the Division sent the Os letters stating that the processing of their applications would not be completed until they each filled out and submitted audit forms and answered certain

¹ Exh. 12, p. 3.

² *Id.*

³ *Id.*

questions. The questions included: “[w]as [the applicant] physically in Alaska at the time of filing their application?;” “[e]xplain where the computer used to file was located...;” “[e]xplain why the application appears to have been filed from out of state;” and “[e]xplain why [the applicant] indicated they were physically present in Alaska... .”⁴ The letters also asked that the Os list all of their absences from Alaska from January 1, 2014 to the date of their response to the letter.⁵ In response to these questions, Mr. O admitted that he had filed the applications from California; he wrote that he had been hospitalized there, “was recovering from a severe illness,” and he “took the shortcut to save explaining why I wasn’t home so said I was in Alaska.”⁶ Mrs. O’s responses also stated that she had been in California, accompanying Mr. O, and that her application had simply copied her husband’s false statement regarding her location at the time of filing the application.⁷ The information submitted by the Os in response to the audit indicated that Mr. and Mrs. O had been absent from Alaska for a total of 158 and 112 days, respectively, during the qualifying year of 2014.⁸

After receiving the Os’ audit forms and processing the supplemental information, the Division denied their 2015 PFDs by letters dated October 30, 2015.⁹ The Os filed requests for informal appeal, and the PFD denials were affirmed in two letters to the Os, dated April 12, 2016.¹⁰ In both of these letters, the Division made the finding that the Os had “intentionally provided deceptive information” in their applications.¹¹ The Os then filed requests for formal appeal,¹² which are the subject of this Decision.

The formal hearing was held on July 20, 2016. The Os represented themselves and appeared in person. PFD Specialist I Bethany Thorsteinson represented the Division and appeared by telephone.

III. Discussion

It is important to the integrity of the PFD program that answers given on PFD applications be accurate. The application asks about the applicant’s current location and about

⁴ Exh. 2, pp 1-2.

⁵ *Id.* at 2, 6.

⁶ Exh. 4, p. 2.

⁷ Exh. 4, p. 8. Mrs. O’s response stated “[m]y husband did it so I did too.”

⁸ Exh. 5, pp. 1, 7.

⁹ Exh. 5.

¹⁰ Exh. 7.

¹¹ *Id.* at 1.

¹² Exh. 9.

absences totaling more than 90 days so that the Division can evaluate circumstances that may affect residence or eligibility. Those who do not accurately report their location or their absences interfere with the Division's ability to perform this task. When PFD applicants believe that they are eligible but they provide incorrect information to save themselves work (i.e., they take a shortcut), they hinder the Division's ability to make the eligibility determination independently based on the correct information.

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.”¹³ Here, the Os failed to disclose a reportable absence, and they also provided false information when they stated that they were physically present in Alaska on the date they submitted their online applications. The question here is whether they intentionally provided this deceptive information.

The Os argued at the hearing on their formal appeal that they did not intend to deceive the Division by falsely stating that they were in Alaska at the time of filing their applications. Rather, they felt confident that they were otherwise eligible for the 2015 dividend, and so they took the easy way out and stated they were in Alaska, even though they were in California at the time. In this manner, the Os argue, they simply avoided having to explain and document all of the details of their absence from Alaska.¹⁴ Regarding their failure to disclose absences in excess of 90 days, they also argued in their formal appeal papers that they misunderstood the application form and thought that it only required disclosure of absences of 90 consecutive days.¹⁵

The Os appeared to be sincere in testifying that they believed themselves to be eligible for the 2015 PFD and that they were not trying to cheat the PFD program. Nonetheless, the information that they provided in their PFD applications was false, and they knew it to be false – they were absent from Alaska on the date they submitted their applications, and they were absent from Alaska for more than 90 days during 2014. And the Os' assertion that they thought that the

¹³ 15 AAC 23.103(j).

¹⁴ M O testimony. The Os also argued that if they had disclosed their absence from Alaska as of the date of filing their applications, they would have been forced to be dishonest about the dates of their absences; because they were away from home without access to their records, they felt that “the inaccessibility of the information left no recourse to [them] but to claim no absences,” and “[t]o have provided erroneous information would have been deceptive.” Exh. 9, p. 4. This argument, however, is without merit; the Os could have disclosed their absence in their applications, and then they could have provided exact dates and documentation upon getting access to their records when they returned to Alaska.

¹⁵ Exh. 9, p. 6.

requirement to disclose 90-day absences referred only to absences of 90 or more consecutive days is implausible, because the application form explicitly requires disclosure of absences from Alaska for “more than 90 days total.”¹⁶ In the face of the plain meaning of the requirement, therefore, the argument carries little weight in supporting the Os’ position that they made an “honest and unintentional mistake.”¹⁷

By arguing that they did not intend to cheat the PFD program, the Os confuse the concept of their general good intentions with the key question here, whether they intentionally provided deceptive information. There is no reasonable dispute that the Os knew that the information they provided in their applications was false. Under these circumstances, the Os intentionally provided deceptive information in their 2015 PFD applications.

IV. Conclusion

Because the Os intentionally provided deceptive information in their 2015 PFD applications, the Division’s denial of their applications is affirmed.

DATED this 2nd day of August, 2016.

By: Signed
Andrew M Lebo
Administrative Law Judge

¹⁶ Exh. 12, p. 3 (emphasis added).

¹⁷ Exh. 9, p. 6.

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 26th day of August, 2016.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge/OAH
Title

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