

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: SULLIVAN, PETER K.

AAD NO. 16-002/MSA

DECISION AND ORDER

The initial Hearing regarding this matter was held on April 5, 2016. This matter came before Hearing Officer David M. Spinella again on October 5, 2017 for a de novo Hearing after being remanded from the Superior Court with instructions to electronically record the proceedings if the Applicant chose not to have it stenographically transcribed. (Peter K. Sullivan v. Rhode Island Department of Environmental Management C.A. No PC 2016-2165). The Rhode Island Department of Environmental Management (“RIDEM”), Office of Boat Registration and Licensing, (“The Division”) was represented by Gary Powers, Esquire. The Applicant, Mr. Peter K. Sullivan, represented himself. The proceedings were electronically recorded at the Applicant’s request. The Division and the Applicant each filed a Post-Hearing Memorandum.

Jurisdiction

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §42-17.1 et. seq.) and the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et. seq.) and the *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matter* (“AAD Rules”).

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Burden of Proof

The Applicant bears the burden of proof in this matter and must prove, by a preponderance of the evidence, that the February 10, 2016 denial of his Multi-Purpose Fishing License (#MPURP000981) renewal by the Division was not in accordance with the Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations (the "Regulations"). (Recording at 11:40)

STIPULATED FACTS

The Applicant stipulated to the following facts offered by the Division:

- (1) Pursuant to an application dated February 4, 2016, the Applicant submitted a request for the renewal of Multi-Purpose Fishing License #MPURP000981 to the Division.
- (2) The Applicant's February 4, 2016 application requesting the renewal of Multi-Purpose Fishing License #MPURP000981 was denied by the Division in a letter dated February 10, 2016.
- (3) Multi-Purpose Fishing License #MPURP000981 expired on December 31, 2009.
- (4) The Applicant submitted a request dated July 27, 2015 to the Division for renewal of his Multi-Purpose Fishing License #MPURP000981 for 2015. That request was denied on August 17, 2015.

The Applicant did not offer any stipulated facts.

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EXHIBITS

At the Hearing, the Applicant Stipulated to the admission, in Full, of all the Division's Exhibits as follows:

Division's Exhibit 1. The Applicant's application dated February 4, 2016 submitted to the Division requesting the renewal of his Multi-Purpose Fishing License #MPURP000981.

Division's Exhibit 2. The Division's letter to the Applicant dated February 10, 2016 denying Applicant's February 4, 2016 Application.

Division's Exhibit 3. The Applicant's February 16, 2016 letter submitted to the Administrative Adjudication Division ("AAD") requesting a hearing before the AAD. This letter appealed the Division's letter dated February 10, 2016 denying the Applicant's February 4, 2016 application for the renewal of Multi-Purpose Fishing License #MPURP000981.

Division's Exhibit 4. A computer printout of the Applicant's license history.

Division Exhibit 5. The Applicant's letter dated July 27, 2015 submitted to the Division requesting the renewal of Multi-Purpose Fishing License #MPURP000981.

Division's Exhibit 6. The Division's letter to the Applicant dated August 17, 2015 denying Applicant's July 27, 2015 request for renewal of Multi-Purpose Fishing License #MPURP000981.

The Division stipulated to the admission, in full, of the Applicant's Exhibits as follows:

Applicant's Exhibit 1. 2016 Shellfish Sector Management Plan

Applicant's Exhibit 2. Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations (October 29, 2015).

The Applicant offered two additional Exhibits which were allowed into evidence, in full, over the Division's objection as follows:

3. Applicants Exhibit 3. Letter dated September 25, 2017 from Dr. Bruce Fischer, M.D. of Medical Associates of Rhode Island (previous letter from Dr. Fischer dated November 30, 2015).

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4. Applicant's Exhibit 4. Letter dated June 7, 2017 from Dr. Marilyn Weigner, M.D. of Cardiovascular Institute at Miriam Hospital (previous letter from Dr. Weigner dated November 30, 2016).

Exhibits 3 and 4 were offered by the Applicant to update and supplement the two exhibits he offered at the previous Hearing held on April 5, 2016 from the same physicians. The earlier letters, as referenced, will be included herein as a part of Exhibits 3 and 4. (Recording at 7:13 and 9:35).

Issue to be Addressed

The issue to be addressed in this matter is whether the Applicant has satisfied his burden of proving that the Division's February 10, 2016 denial of the Applicant's February 4, 2016 application for the renewal of Multi-Purpose Fishing License #MPURP000981 violated the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.

WITNESSES

The Applicant was the only witness who testified as part of his case. The Division presented Ms. Margaret McGrath, Programing Services Officer; Mr. John Lake, Principal Biologist-Marine Fisheries and Ms. Nicole Ares, Principal Biologist.

TESTIMONY

A. Applicant

1. Mr. Peter K. Sullivan

The Applicant testified on his own behalf. On February 4, 2016, the Applicant applied for reinstatement of his previously held Multi-Purpose Fishing License which was denied by the Division on February 10, 2016 (Recording at 12:30).

The Applicant testified that his Multi-Purpose Fishing License should have been renewed in 2016 because his case involves medical hardship pursuant to Article 6.7-10 of the Regulations entitled "Requests for Reconsideration of License Denials". (Recording at 15:59).

6.7-10 (a) reads as follows:

There shall be no right to request reconsideration by the commercial fishing license review board or appeal to the department of environmental management's administrative adjudication division (AAD) for the rejection of any new license applications submitted after February 28, or any license renewal applications submitted after the sixty (60) day grace period, except in the case of a documented medical hardship as defined herein.

The Applicant argues that he submitted to the Office of Boat Registration and Licensing two letters from a Board Certified Cardiologist and Internal Medicine doctor as required by Regulation 6.7-9 entitled "Issuances of New Licenses and Operator Permits Under Hardship Conditions" (Applicant's Exhibit 3 and 4). (Recording at 17:08).

Regulation 6.7-9 in pertinent part reads as follows:

- (a) A hardship shall be deemed to exist if a license holder who is actively fishing or dies or becomes permanently or temporarily incapacitated by illness or injury so as to not be able to fish for any period in excess of fourteen (14) days.
- (b) The Department will require proof of hardship in the form of a death certificate or a diagnosis and prognosis of the incapacity of the license holder signed by a medical doctor (M.D. or O.D.)
- (e) In the case of temporary incapacity, exceeding a period of fourteen (14) days, the Department will issue, upon application, an operator permit or equivalent license of the same category to a Rhode Island resident designated by the incapacitated license holder. Said permit or license will serve as the legal equivalent of the license held by the incapacitated license holder. Prior to issuance of the operator permit or equivalent license, the original license will be suspended. The operator permit or equivalent license will remain valid for the balance of the license year, or until the return to wellness of the incapacitated license holder, whichever occurs first. The operator permit or equivalent license will be eligible for renewal once, at a cost equivalent to the cost of the original license, upon approval of the Director. Upon the return to wellness of the incapacitated license holder, the original license will, upon application, be reinstated and the operator permit or equivalent license will be surrendered.

The second hardship Mr. Sullivan claims he proved under Regulation 6.7-9 is financial hardship. He was employed by the State of Rhode Island for thirty five years and retired in 2008. He had certain financial benefits at retirement that were washed away by pension reform legislation enacted by the Rhode Island General Assembly which took away his expected cost of living adjustment (COLA). He said he will lose twenty thousand dollars of income. (Recording at 17:57).

Lastly, Mr. Sullivan discussed the 2016 Shellfish Sector Management Plan (Applicant's Exhibit 1). He said that there is a healthy shellfish population and most of the multipurpose license holders are catching shellfish and not finfish. (Recording at

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23:09). Counsel for the Department objected to these areas of testimony indicating that the Applicant made no reference to medical or economic hardship in the February 4, 2016 application he submitted which was reviewed by the Division. (Recording at 25:55).

The Applicant then discussed the lottery by which certain fishing licenses are issued. He discussed the unfairness of not being able to get his license renewed after fishing his whole life but argued that anyone, even someone with no experience, can get a license by entering the lottery. (Recording at 37:44).

The Division did not cross examine the Applicant.

The Applicant then rested.

A. **The Division**

1. **Margaret McGrath**. Ms. McGrath is the Programming Services Officer of the Division of Boating Registration and Licensing. She has been in the position since 2000. She determines which fishing licenses get approved or denied based on the Commercial and Saltwater Fishing License Regulations. She stated that several thousand license applications are filed each year (Recording at 43.10).

On February 4, 2016, the Applicant filed an application for renewal of his Multi-Purpose Fishing License (Division's Exhibit 1). She said there were no medical records attached to the application. (Recording at 45:55). There was no reference to financial hardship or resource supply in his application (Recording at 45:55). She authored the denial letter to the Applicant on February 10, 2016 (Division's Exhibit 2). The denial

was based on the fact that the Applicant did not possess a Multi-Purpose License in 2015. Therefore, pursuant to Regulation 6.7-4 (c), his renewal had to be denied for 2016. (Recording at 47:37). The last time he held a valid Multi-Purpose License was in 2009 (Recording at 48:12).

Section 6.7-4(c) of the Regulations provides as follows:

(6.7-4) License Renewals, Transitions and Upgrades

- (c) **Applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year;** alternatively, applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately prior year may obtain a Principal Effort License with Quahaug (resident only) Soft-Shell Clam (resident only), Shellfish Other (resident only) Lobster (resident only), Non-Lobster Crustacean (resident only) Restricted Finfish, Non-Restricted Finfish and/ or Whelk (resident only) endorsements for the immediately following year. (emphasis added)

Ms. McGrath also testified that the Applicant had previously applied for the renewal of his Multi-Purpose Fishing License (#MPURP000981) on August 13, 2015 in which he requested to “have [the Applicant’s] previously held shellfishing license reinstated.” (Division’s Exhibit 5) (Recording at 49:19). A review of Division’s Exhibit 5 also reveals that the Applicant requested that the Department “allow [him] to obtain [his] previously held license now rather than wait until 65” at which age all Rhode Island residents are permitted to obtain a commercial shellfishing license. The Applicant’s August 13, 2015 application was

denied by Ms. McGrath in a letter dated August 16, 2015 (Division's Exhibit 5). The Applicant opted not to appeal the August 16, 2015 determination.

Ms. McGrath also testified that subsequent to the initial April 5, 2016 hearing before the AAD in this matter, the Applicant has applied for and been issued a commercial fishing license that is available at no charge to any Rhode Island resident who is age 65 or older. (Recording at 51:13).

2. Nicole Ares

The Division next presented Ms. Nichole Ares who is a Marine Biologist with the Division of Marine Fisheries. Ms. Ares testified that part of her responsibilities is to coordinate the Department's implementation of the Standard Atlantic Fisheries Information System which is commonly referred to as the SAFIS program. Ms. Ares explained that SAFIS is a mandatory program pursuant to which any licensed dealer that is authorized to purchase seafood products from harvesters, including shellfish, is required to report said purchases to her office. (Recording at 57:48).

She indicated that she reviewed records pertaining to the Applicant and that no sales by the Applicant had been reported in SAFIS under his "over 65" license. On cross examination, the Applicant disagreed with her and asked if she was aware that sales had taken place by him to a licensed dealer in Bristol Rhode Island that had not

been reported to her. (Recording at 1:01). She reiterated that the sales were not in the SAFIS program.

3. John Lake

As its final witness, the Division called John Lake who is a Marine Biologist in the Division of Marine Fisheries. Mr. Lake testified that he was responsible for the creation of the *Department of Environmental Management Division of Fish and Wildlife 2016 Shellfish Sector Management Plan*. (Applicant's Exhibit 1). Mr. Lake testified that Applicant's Exhibit 1 does not address the issuance or reissuance of Multi-Purpose Fishing Licenses which is the license the Applicant wants renewed. Mr. Lake stated that Applicant's Exhibit 1 deals with the issuance of commercial shellfish licenses. (Recording at 1:06).

ANALYSIS

The Applicant argued that his 2016 Renewal Application met the criteria outlined in the Regulations as he sufficiently demonstrated medical and financial hardship in order to have his Multi-Purpose License reinstated in 2016 despite the fact it expired in 2009. (Recording at 1:11). In his letter to Ms. McGrath dated July 27, 2015, (Division's Exhibit 5) he acknowledged that his renewal request was untimely. He stated "I am writing this letter to request a waiver of the missed application

period... this situation requires me to make this request even though the window of the application process has closed”.

Ms. McGrath clearly indicated in her denial letters (Division’s Exhibit 2 and 6) and her testimony that the reason the Applicant’s Multi-Purpose Fishing License was not renewed in 2016 was that the Applicant did not possess a valid Multi-Purpose Fishing License as of December 31, 2015. His Multi-Purpose License expired in 2009. He did not submit any medical documentation with his license renewal requests according to Ms. McGrath. More importantly, and by his own admission, he failed to submit any evidence to the Division substantiating his medical hardship in 2009 as required by Regulation 6.7-9 which could have preserved his Multi-Purpose License.

Similarly, the Applicant’s testimony about his financial hardship; the Shellfish Sector Management Plan and the fishing license lottery is not relevant to the main issue of his failure to timely document and demonstrate a medical hardship to the Division before he allowed his license to expire in 2009. The Applicant caused his own ineligibility under Regulation 6.7-4 (c) to have his license renewed.

Based on all of the facts, circumstances and evidence presented, I do not believe that the Applicant demonstrated, by a preponderance of the evidence, that the Division’s decision to deny his renewal request of February 4, 2016 of his Multi-Purpose Fishing License was incorrect. Therefore, the Division’s February

10, 2016 decision to deny his request for a renewal of his Multi-Purpose Fishing License will be upheld.

Findings of Fact

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. The Applicant's Multi-Purpose Fishing License #MPURP000981 expired on December 31, 2009.
3. The Applicant submitted to the Division a request for the renewal of Multi-Purpose Fishing License #MPURP000981 for 2015 dated July 27, 2015 which was denied on August 17, 2015. The Applicant did not appeal this decision.
4. Pursuant to an application dated February 4, 2016, the Applicant submitted a request for the renewal of Multi-Purpose Fishing License #MPURP000981 to the Division.
5. The Applicant's February 4, 2016 application requesting the renewal of Multi-Purpose Fishing License #MPURP000981 was denied by the Division in a letter dated February 10, 2016.
6. The Applicant filed a timely appeal of the denial with the Administrative Adjudication Division on February 16, 2016.
7. The Applicant failed to submit any evidence/documentation of medical hardship to the Division pursuant to Regulation 6.7-9 in 2009.
8. The Applicant did not possess a valid Multi-Purpose License in 2015 or 2016.

Conclusions of Law

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. The Applicant failed to prove medical hardship conditions to the Division prior to the expiration of his Multi-Purpose License in 2009 pursuant to Regulation 6.7-9.


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3. The Applicant's February 4, 2016 application requesting the renewal of Multi-Purpose Fishing License #MPURP000981 was properly denied by the Division in its letter dated February 10, 2016 in accordance with Section 6.7-4 of the Regulations.
4. The Applicant failed to sustain his burden of proof, by a preponderance of the evidence, that the Division's determination and letter of February 10, 2016 denying his request for renewal of his Multi-Purpose Fishing License (#MPURP000981) violated the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.

Wherefore, it is hereby **ORDERED** that:

1. The Applicant's Appeal to the Administrative Adjudication Division filed February 16, 2016 is hereby **DENIED AND DISMISSED**.
2. The Division's February 10, 2016 denial letter of the Applicant's renewal request of his Multi-Purpose Fishing License (#MPURP000981) is hereby **AFFIRMED** and **SUSTAINED**.

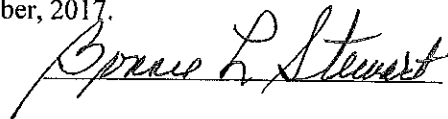
Entered as an Administrative Order this 30th day of November, 2017.



David M. Spinella
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded, via regular mail, postage prepaid to: Peter K. Sullivan, 18 Jane Lane, Bristol, RI 02809 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 30th day of November, 2017.



NOTICE OF APPEALS RIGHTS

This Decision and Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.