

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

RE: **PACHECO, MARIA P.**
LICENSE TRANSFER DENIAL

AAD NO. 14-011/MSA

DECISION AND ORDER

Parties and Jurisdiction

This matter was heard on May 20, 2015. The Rhode Island Department of Environmental Management, Office of Boat Registration and Licensing ("OBRL" or "Division"), was represented by Gary Powers, Esquire and Elizabeth Hackney (Rule 9 law student). The Applicant represented herself with her son, Francisco Pacheco, assisting with translation. A stenographic transcript was made of the proceeding but not purchased or provided to this Hearing Officer.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters ("AAD") (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* ("AAD Rules"). The parties agreed that the Administrative Adjudication Division has jurisdiction over the subject matter of the Applicant's appeal as well as personal jurisdiction over the Applicant pursuant to the Applicant's request for an appeal filed December 11, 2014.

Facts and Travel

This action is before the Rhode Island Department of Environmental Management, Administrative Adjudication Division ("AAD") pursuant to a request for a Hearing submitted to the AAD by Applicant Maria P. Pacheco (the "Applicant"). The Appeal challenges the

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determination by the OBRL of October 20, 2014 denying the Applicant's October 9, 2014 request to transfer the commercial fishing license (Principal Effort License or PEL #001257), which had been issued to the Applicant's deceased husband, Francisco Pacheco (the "Decedent" or the "License holder"). The OBRL denied the Applicant's application for the license transfer because the commercial fishing history of PEL #001257 revealed that the license holder was not actively fishing PEL #001257 at the time of his demise as mandated by Rule 6.7-9(a) and Rule 5.1 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*.

Rule 6.7-9(a) – (c) of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* provide as follows.

(6.7-9) Issuance of New Licenses and Operator Permits Under Hardship Conditions

- (a) A hardship shall be deemed to exist if a license holder who is actively fishing (emphasis added) 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.).
- (c) In the case of permanent incapacity or death, the Department will issue, upon application, a single, new equivalent license with applicable endorsement(s) to a member of the license holder's family who is a Rhode Island resident. That family member may be designated by the license holder or by mutual agreement among surviving family members if the license holder is deceased. Prior to issuance of the new license, the original license will be surrendered. The new license will be valid for the balance of the license year, and will be eligible for renewal pursuant to the terms and conditions set forth in Section 6.7-3.

Rule 5.1 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* defines "Actively Fishing" as follows:

- (5.1) "Actively Fishing." – A license holder will be considered to have been actively fishing that license/ endorsement if he or she demonstrates by dated transaction records, as verified by

dealer reports to the Department, that he or she has fished at least seventy-five (75) days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years. (emphasis added) Evidence as to days fished may be supplemented by one or more Vessel Trip Reports, which specifically reference the license holder's name and license number, and correspond to dated transaction records, where in the determination of the Department such dates are verified by dealer reports to the Department; where such reports verifiably reflect two or more calendar days at sea during a single trip, those days may be used to establish fishing activity. For the purpose of this definition the term "day" shall mean any 24-hour period or part thereof.
(Emphasis added.)

Issue

Whether the Applicant satisfied her burden of proving that the OBRL's October 20, 2014 denial of her October 9, 2014 application requesting the transfer of PEL #001257 to the Applicant's son pursuant to Rule 6.7-9 and Rule 5.1 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* was incorrect and inconsistent with Rule 6.7-9 and Rule 5.1.

Stipulated Facts

The Parties stipulated to the following Facts prior to the Hearing:

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) Pursuant to the application dated October 9, 2014, the Applicant applied to the OBRL for the transfer of PEL #001257 to the Applicant pursuant to Rule 6.7-9 of *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* due to the demise of the license holder of PEL #001257.
- (3) PEL #001257 was not deemed to have been actively fished.
- (4) The OBRL's letter dated October 20, 2014 advised Applicant of the OBRL's determination denying Applicant's Application dated October 9, 2014 requesting the transfer of PEL # 001257 and further advised Applicant of her opportunity to request a hearing before the AAD within thirty (30) days of receipt of the October 20, 2014 denial letter.
- (5) The Applicant submitted a letter to the AAD on December 12, 2014 requesting a hearing concerning the OBRL's October 20, 2014 denial of Applicant's October 9, 2014 Application requesting transfer of PEL #001257 to the Applicant pursuant to Rule 6.7-9 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*.

Exhibits

The parties stipulated to the following exhibits prior to the Hearing as Full Exhibits:

Exhibit A - The Applicant's Application postmarked October 9, 2014 requesting the transfer of PEL #001257 to the Applicant pursuant to Rule 6.7-9 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*. 2 pages (Copy).

Exhibit B - The landing history of the license holder of PEL #001257 for the years 2012 and 2013. 2 pages (Copy).

Exhibit E - Applicant's license history for PEL #001257. 8 pages (Copy).

Exhibit F - The OBRL's letter dated October 20, 2014 denying the Applicant's Application postmarked October 9, 2014 requesting the transfer of PEL #001257 to the Applicant pursuant to Rule 6.7-9 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*. 2 pages (Copy).

Exhibit G - The Applicant's letter postmarked December 11, 2014 appealing the denial of request for the transfer of PEL #001257 to the OBRL. 2 pages (Copy).

Applicant's Exhibit 1 - Death Certificate of Francisco Pacheco - (date of death 5/17/14)

OBRL/Division's Exhibit H - Judgment of Conviction and Commitment State of Rhode Island vs. Francisco Pacheco, (Rhode Island Superior Court 9/12/12).

Witness / Testimony

Mrs. Maria Pacheco testified that she had ordered medical records from Rhode Island Hospital but had not received them as of the Hearing date. She asked for a continuance. The OBRL objected. A review of the file indicated that the Applicant was given a three month continuance by Order dated February 16, 2015 to obtain medical records. No further requests for a continuance were made by her prior to the Hearing. The Applicant's oral Motion was denied and OBRL's Objection was sustained.

The Applicant then testified that her husband had cancer and died within one year after

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being diagnosed. The Applicant then offered her husband's death certificate as Applicant's Exhibit 1 which was admitted as a full exhibit. The Applicant argued that due to her late husband's illness he was unable to actively fish and make the requisite number of landings, as required by Rule 6.7-9 (a) and 5.1 respectively.

The Applicant then rested her case.

The Division proceeded with the testimony of Mrs. Margaret McGrath. Ms. McGrath is the Programming Services Officer at the OBRL. She stated that when she received Mrs. Pacheco's letter of October 9, 2014 requesting that her late husband's license be transferred to her son Francisco G. Pacheco, she was required by the regulations, to review the license history for the prior two years. She determined that Mr. Pacheco did not meet the standard of "actively fishing" seventy five (75) days. He only fished sixteen (16) days according to Ms. McGrath. The fact that Mr. Pacheco's license was suspended by Order of the Superior Court from 2012 – 2013 was not a factor in her decision as the regulations afford her no discretion and require that the license holder actively fish for at least seventy five (75) days in the previous two years.

Environmental Police Officer Jennifer Ogren then testified regarding the license suspension issue and the OBRL presented a certified copy (OBRL H – Full) of the Superior Court Judgment of Conviction from State of Rhode Island vs. Francisco Pacheco which demonstrated that Mr. Pacheco's license was suspended from July 19, 2012 through July 19, 2013.

The Applicant also indicated that she did not apply to the Division for any hardship relief pursuant to the provisions of Rule 6.7-9.

Based on the evidence presented at the Hearing, I do not find it necessary to reconvene this matter for the purpose of reviewing the decedent's medical records as the requisite number of landings were not made by him in the two years prior to the request to transfer his license.

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The applicant did not sustain her burden of proof in this matter and I therefore find in favor of the OBRL.

Findings of Fact

1. The Administrative Adjudication Division has subject matter and personal jurisdiction over the Applicant.
2. The Applicant duly filed an appeal with the AAD on December 11, 2014.
3. The Applicant's husband, Francisco Pacheco was the holder of a commercial fishing license (PEL # 001257).
4. Mr. Pacheco died on May 17, 2014
5. The OBRL denied Applicant's request to transfer PEL # 001257 to her son, Francisco G. Pacheco.
6. The OBRL, by letter dated October 20, 2014, advised the applicant that her application to transfer the license was denied because the history of the license revealed that Mr. Pacheco was not actively fishing at the time of his passing pursuant to Rule 6.7-9 of the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.
7. "Actively fishing" is defined as having fished at least seventy five (75) days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years. (Rule 5.1 of the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.
8. Mr. Pacheco only fished sixteen (16) days in the two years prior to his death.
9. The applicant did not apply to the OBRL for any hardship relief pursuant to the provisions of Rule 6.7-9.

Conclusions of Law

1. The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* ("AAD Rules").
2. The parties agreed that the Administrative Adjudication Division has jurisdiction over the subject matter of Applicant's appeal as well as personal jurisdiction over the Applicant pursuant to the Applicant's request for an appeal filed December 11, 2014.
3. The Applicant had the burden of proving, by a preponderance of the evidence, that the OBRL's denial of the transfer request application was incorrect.
4. The Applicant failed to prove, by a preponderance of the evidence that the OBRL improperly and incorrectly denied her request of October 9, 2014 to transfer her late husband's license (PEL001257).

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

1. The OBRL's denial of Applicant's October 9, 2014 request to transfer Francisco Pacheco's license (PEL001257) is hereby **Upheld** and **Sustained**.
2. The Applicant's appeal is hereby **Denied** and **Dismissed**.

Entered as an Administrative Order this 16th day of September, 2015.



David M. Spinella
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
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Providence, RI 02908
(401) 574-8600

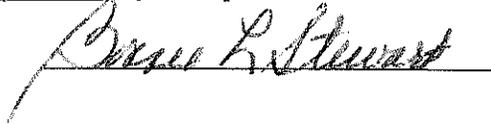
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CERTIFICATION

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded, via regular mail, postage prepaid to: Maria P. Pacheco, 124 Child Street, Warren, RI 02885 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 14th day of September, 2015.



NOTICE OF APPELLATE RIGHTS

This Final 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.