

On March 14, 2011, NAO received Appellant's timely appeal of the IAD.⁶ In the appeal, Appellant explained how his health issues affected his business.⁷ Appellant indicated that because of his illness he had to stop fishing and could not resume fishing until 2009.⁸ Appellant asserts "the reason for the late application is that [he] was going through treatment for... ██████████ which is now cured."⁹ Appellant indicates that he had previously sent to RAM his medical records in support of his claim that he was unable to file his application timely due to medical treatment.¹⁰ Attached to his application submitted to RAM are seven pages of Appellant's medical records.¹¹

Upon review of Appellant's appeal and case record, I have determined that the record contains sufficient information on which to reach a final judgment. There is no disputed material issue of fact, and no need for a hearing for testimony on disputed factual issues. I therefore am exercising my discretion to not hold a hearing and issue a decision based on the case record. Accordingly, I close the record and issue this decision.¹²

ISSUES

At issue in this appeal is whether RAM correctly denied Appellant's application for a CHP. To resolve this issue, I must evaluate the following:

Did Appellant establish by a preponderance of the evidence that he filed his application for a CHP by the April 5, 2010 application deadline specified in the Federal Register?

If the answer to the question is "no," I must uphold the IAD and conclude that Appellant did not timely file her application for a CHP.

FINDINGS OF FACT

1. On January 12, 2010, NMFS published a notice in the Federal Register that announced the application period for the CHP.¹³
2. The period for submission of a CHP application lasted from February 4, 2010 until April 5, 2010.¹⁴
3. Applications were to be obtained via internet or by requesting a CHP application from NMFS.¹⁵

⁶ Pleadings File Tab, Appellants' type-written appeal letter received on March 14, 2011.

⁷ Pleadings File Tab, Appellants' type-written appeal letter received on March 14, 2011.

⁸ Pleadings File Tab, Appellants' type-written appeal letter received on March 14, 2011.

⁹ Pleadings File Tab, Appellants' type-written appeal letter received on March 14, 2011.

¹⁰ Pleadings File Tab, Appellants' type-written appeal letter received on March 14, 2011.

¹¹ Original File Tab, seven-page attachment to Application.

¹² See 50 C.F.R. § 679.43 (g) and (k).

¹³ 75 Fed. Reg. 1595 (January 12, 2010).

¹⁴ 75 Fed. Reg. 1595 (January 12, 2010).

¹⁵ 75 Fed. Reg. 1595 (January 12, 2010).

4. On February 24, 2011, Appellant faxed his CHP application to RAM.¹⁶
5. On February 28, 2011, RAM issued its IAD and denied Appellant's application for a CHP because it was not filed timely.¹⁷

PRINCIPLES OF LAW

The regulations governing the CHLAP provide that NMFS will issue a CHP if the applicant meets certain requirements. One such requirement is that the applicant applies for a CHP by submitting a CHP application within the application period (not less than 60 days) as specified in the Federal Register.¹⁸ The CHLAP regulations further provide that NMFS will deny any application submitted after the last day of the application period.¹⁹

In accordance with its regulations, on January 12, 2010, NMFS informed the public of the CHP application period through publication of a notice in the Federal Register. The notice specified the application period beginning February 4, 2010, and ending April 5, 2010. In the notice, NMFS also informed the public that it could obtain an application on the internet or by requesting an application from NMFS. Lastly, all CHP applications submitted after the deadline would be considered untimely and denied.²⁰

ANALYSIS

The regulations governing the CHLAP require that CHP applications must be submitted within the application period and that applications submitted after the application deadline are deemed untimely and denied.²¹

On January 12, 2010, NMFS published a notice in the Federal Register that announced the application period for a CHP. In the notice NMFS announced the application period for charter halibut permits "begins on February 4, 2010, and ends at the close of business on April 5, 2010... Applications postmarked after April 5, 2010, or delivered after the close of business on April 5, 2010, will be denied."²²

Based on statements made by Appellant in his appeal, Appellant resumed charter fishing in late 2009 after his health began to improve.²³ One of the medical records in the file indicates he visited a physician on November 19, 2009. During that visit, his

¹⁶ Original File Tab, Application for Charter Halibut Permit(s) for IPHC Regulatory Areas 2C and 3A (Application).

¹⁷ Original File Tab, IAD dated January 25, 2011.

¹⁸ 50 C.F.R. §§ 300.67 (b)(1)(i) and 300.67 (h)(1).

¹⁹ 50 C.F.R. § 300.67(h)(1).

²⁰ 75 Fed. Reg. 1595 (January 12, 2010).

²¹ 50 C.F.R. §300.67(h)(1); 75 Fed. Reg. 1595 (January 12, 2010).

²² 75 Fed. Reg. 1595 (January 12, 2010).

²³ Pleadings File Tab, Appellants' type-written appeal letter received on March 14, 2011.

physician noted that Appellant “has returned from Alaska and is now planning to spend the next few months in Thailand. He is feeling well and has regained all his weight and then some.”²⁴ The case record does not show why Appellant did not file his application on or before April 5, 2010. Since Appellant’s application was filed on February 24, 2011, about ten months after the deadline, RAM had no authority to accept Appellant’s application for processing under the CHLAP regulations. Similarly, under the CHLAP regulations, NAO has not been authorized to accept late applications. Therefore, I conclude that Appellant’s application was not filed in a timely manner and RAM correctly followed its regulations and properly denied Appellant’s application for a CHP.

CONCLUSIONS OF LAW

Appellant did not timely file his application for a CHP.

RAM correctly followed its regulations governing the CHLAP when it denied Appellant’s application for a CHP.

ORDER

The IAD dated February 28, 2011 is upheld. This decision takes effect thirty days from the date issued, September 19, 2011,²⁵ and will become the final agency action for purposes of judicial review, unless a motion for reconsideration is made pursuant to <http://www.fakr.noaa.gov/appeals/reconsiderationpolicy.htm>, or the Regional Administrator elects to review this decision pursuant to 50 C.F.R. § 679.43(k) and (o).

Appellant or RAM may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m. Alaska Time, on the tenth day after the date of this Decision, August 29, 2011. A Motion for Reconsideration must be in writing, must allege one or more specific material matters of fact or law that were overlooked or misunderstood by the administrative judge, and must be accompanied by a written statement in support of the motion.



Eileen G. Jones
Chief Administrative Judge

Date Issued: August 19, 2011

²⁴ Original File Tab, attachment to Application printed Feb 22, 2011 reflecting Nov 19, 2009 visit to physician.

²⁵ 50 C.F.R. § 679.43(k) and (o).