

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE COMMISSION ON POSTSECONDARY EDUCATION**

In the Matter of the )  
 )  
 J M. H ) OAH No. 12-0003-PSM  
 ) Agency No. 2774340849

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**DECISION AND ORDER**

**I. Introduction**

The main issue in this case is whether J M. H’s student loan notes, which are held by the Alaska Commission on Postsecondary Education (Commission), should be cancelled due to her medical status. After an evidentiary hearing, the question has been answered in the negative.

Ms. H failed to meet her burden of proof to show that she currently meets the requirements for medical cancellation of her student loans. She failed to show that she is 50% permanently disabled because she did not demonstrate that she has exhausted treatment options could enable her to return to half-time employment, and she did not show that she could not work full or part time now. Because the tribunal’s authority in appeal is limited to Staff’s determination that Ms. H does not meet the requirements for medical cancellation, any issues related to who signed the loans are not addressed in this decision.<sup>1</sup>

**II. Facts**

Ms. H received a total of four student loans for the 1991-1992 and 1993-1994 academic years. The terms of each loan was secured by a promissory note. All four allowed for cancellation of the debt if Ms. H became disabled. Three of the loans required only 50% disability for cancellation and one loan required total disability for cancellation. The Commission Staff numbered the loans AL 00 01, AL 00 02, AL 00 04, and AL 00 05.

Ms. H sought medical cancellation of the debt owed on the loans. The Commission Staff denied Ms. H’s application for cancellation of her Alaska Student Loan debt in a letter issued on

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<sup>1</sup> The Administrative Law Judge has denied Commission Staff’s motion for summary adjudication because there were material facts in dispute. There was conflicting evidence regarding the extent of Ms. H medical problems, how her condition impacts her ability to work, the extent to which she has exhausted her treatment options, and the extent to which she has tried to find employment that she can maintain despite her medical conditions. These factual issues could be resolved through summary adjudication because some of the evidence could be read to support her claim of disability. Accordingly, the case has been decided on the full hearing record rather than on the summary adjudication record.

October 20, 2011. The Staff explained that it was not granting the cancellations because Ms. H had not proven her disability as required under the terms of promissory notes.

Ms. H provided medical records showing that she has bipolar disorder, depression and anxiety. Ms. H also provided a letter from her health care provider, Dr. X, MD, indicating that Ms. H suffers from a psychiatric condition which makes her unable to maintain consistent employment and further opining that due to access and financial constrictions, Ms. H has been unable to get consistent and effective psychiatric care. Doctor X also indicated in her letter that Ms. H was totally disabled but could be rehabilitated “if she receives consistent psychiatric care.” Beyond the psychiatric conditions, Doctor X noted that Ms. H has sleep apnea and chronic degenerative disc disease.<sup>2</sup>

Ms. H testified that she has been unable to obtain the psychiatric care due to costs and limited mental health care within her financial means in the area she is living. She stated that she has been unemployed since November of 2010, and she believes that it is her psychiatric condition, that is bipolar disorder, depression and anxiety, and her inability to receive obtain consistent psychiatric care that are primarily responsible for her unemployment.

Ms. H explained that she is a single mother who is financially dependent on her fiancé and cannot afford mental health treatment that is not provided without insurance. Ms. H testified that her current psychologist will only see her three times per year to renew her drug prescriptions. Ms. H’s understanding is that she should be seeing a psychologist at least twice a month, but cannot afford that. Ms. H explained that she has difficulty with anxiety, which makes it difficult to speaking in public. Further, she testified that her bipolar condition makes her subject to mood swings when she is not too depressed to work, as well as making her agitated, irritable, and aggressive. Her depression makes her miss work. She has memory problems that impair her performance in her former employment as a school psychologist. Ms. H suffers from side-effects from the drugs she is prescribed. She has difficulty sleeping. Ms. H admitted, however, that she has some good days when she can work.

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<sup>2</sup> Ms. H also provided a letter from Dr. Y, explaining the ways that her symptoms and the drugs she takes for treatment had an adverse impact on her ability to perform her duties when she was working as a \_\_\_\_\_.

### **III. Discussion**

#### **A. Signature on Loan Contract**

Ms. H argued that she should not be responsible for paying back one of her loans because she believes that her mother signed the promissory note. The Commission Staff correctly argue that the issues of the enforceability of the loan contract are not relevant to the issue that is the subject of Ms. H's appeal in this case, which is the Commission Staff's denial of her request for a medical cancellation of her student loan debt.<sup>3</sup>

The appeal regulation sets up a hearing limited to the issue of whether "the borrower is disabled to the extent allowing cancellation" and is "unable to repay."<sup>4</sup> Ms. H's rights to contest the enforceability of the loan contract based on whether she or her mother signed the contract are beyond the scope of such an appeal, and would have to be raised in another forum. Since I do not have the authority to address that issue I will make no ruling on the merits of this claim.

#### **B. Medical Cancellation**

A borrower who wishes to overturn a decision that she is not entitled medical cancellation of her Alaska student loan debt must show that the determination that she is not permanently disabled to the extent required by her promissory note was incorrect.<sup>5</sup> The borrower who files such an appeal has the burden of showing that the determination was incorrect by a preponderance of the evidence, that is, that it is more likely than not.<sup>6</sup> Ms. H may be disabled, but she did not meet her burden of proof to show that she is.

The evidence Ms. H provided shows she has not been successful in her attempts to obtain the treatment that she and her care providers believe she needs. This evidence does not show Ms. H has taken all the reasonable steps that she could reasonably take to obtain the treatment she needs to be able to find and maintain some level of employment. This evidence also does not show that even in her present condition that Ms. H has made reasonable efforts to obtain full or even half time employment.

Most of Ms. H's promissory notes allow medical cancellation on a showing of 50 percent disability. Although, requiring less than total disability may allow a medical cancellation of

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<sup>3</sup> Alaska Statute 14.43.145, Alaska Statute 14.43.153 & Alaska Regulation 20 AAC 15.920(a).

<sup>4</sup> Alaska Regulation 20 AAC 15.920(e).

<sup>5</sup> Alaska Regulation 20 AAC 15.920(b) sets out the requirements for medical cancellation.

<sup>6</sup> Alaska Regulation 15.920(e).

Alaska student loan debt even when the borrower can still work part-time, the requirement of a showing a percentage of disability implies that the borrower must show that she cannot work at least some portion of a full-time work schedule. There is no explicit indication that disability is tied to the ability to work in a particular job or profession. There is an implicit indication that the disability must be permanent.

Ms. H has not shown that she has made reasonable efforts to find employment within or outside the field of her prior work as a \_\_\_\_\_. The letters from her medical providers do not discuss what types of employment Ms. H might be able to work at now. Instead, the focus of these letters appears to be her ability to continue in her former work in education. Ms. H's evidence does not show that she cannot work full or part-time because her providers do not discuss whether they have explored or considered whether Ms. H has the ability to obtain other employment alternatives either for the short or long term.

Ms. H has not shown that her disability is permanent. Her evidence indicates to the contrary, that she could improve if she is able to get more consistent treatment. What her medical providers have written about her condition does not show that she is permanently disabled and that as result of the disability she will be unable for an indefinite period of time to be gainfully employed. Rather, what Ms. H provided from her doctors only shows that she will be unable to return to her former work until she gets more consistent treatment.

Ms. H did not provide the actual testimony of her physician, which might have helped her meet her burden of proof.<sup>7</sup> There may be cases where a borrower could meet their burden of proof through written testimony of a physician, but Ms. H's was not one of those cases. To meet her burden Ms. H would have needed to provide the testimony of a physician who could provide an informed opinion about how Ms. H's medical conditions limit her ability to maintain any type of employment and answer questions about the basis of that opinion. Ms. H's evidence simply does not meet the requirements for medical cancellation.

#### **IV. Conclusion**

As noted above, Ms. H may be able to show that she meets the requirements for medical cancellation of all or some of her Alaska student loans at some point in the future, but the

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<sup>7</sup> Alaska Regulation 20 AAC 15.920(e) specifically lists the testimony by a qualified physician as part of evidence that the borrower should provide at the hearing.

evidence in the record does not show it is more likely than not that Commission Staff's decision that she does not meet these requirements was incorrect.

**V. Order**

The Commission Staff's decision denying Ms. H's application for cancellation of her Alaska Student Loan debt on the loans numbered AL 00 01, AL 00 02, AL 00 04, and AL 00 05, issued on October 20, 2011, is affirmed.

DATED this 23<sup>rd</sup> day of May, 2012.

By: Signed  
Mark T. Handley  
Administrative Law Judge

**COMMISSION ACTION ON DECISION AND ORDER**

The Commission having reviewed review the materials reviewed by the administrative law judge, the administrative law judge's proposed decision, and the record on appeal, for the Decision and Order in The Matter of J M. H, OAH No. 12-0003-PSM, in accordance with 20 AAC 15.920(e), hereby

Option 1: accepts the proposed decision in its entirety under 20 AAC 15.920(e).

Date: May 29, 2012

By: Diane Barrans

Title: Executive Director

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