



According to the University, Mr. G. did not cancel his room reservation and he did not check-in prior to the start of classes.<sup>7</sup> On April 15, 2005, the University sent Mr. G. notice that he was in default in the amount of \$400.00 and that the University would take his PFD if he did not pay the full amount.<sup>8</sup> On July 28, 2005, the University sent Mr. G. notice that it had filed a claim against his 2005 PFD and included a Notice of Defense form with which he could request a hearing.<sup>9</sup> Mr. G. returned the Notice of Defense form to the University after checking the box on the form stating, “[t]he amount I owe is less than the amount claimed from my permanent fund dividend,” and writing in, “I would like to know exactly what the \$400 charge is for!”<sup>10</sup> The University mailed Mr. G. an explanation of the charge on September 15, 2005, and offered him the opportunity to withdraw his Notice of Defense.<sup>11</sup> The matter was then forwarded to the Office of Administrative Hearings.

The Office of Administrative Hearings mailed Mr. G. notice that a prehearing conference would be held on October 14, 2005.<sup>12</sup> Ardith Lynch, Associate General Counsel for the University, Janice Pearce, from the University Collections Department, and Rebecca Myhill, a University Collections Officer, all participated in the October 14 conference.<sup>13</sup> An attempt was made to reach Mr. G.<sup>14</sup> A person who answered the phone at Mr. G.’s phone number of record indicated that he would be out of town for the next couple of weeks, but that he was receiving his mail.<sup>15</sup> November 1, 2005, was selected as the hearing date.<sup>16</sup> A Prehearing Order and Notice of Hearing, which stated the date of the hearing and directed Mr. G. to notify the administrative law judge whether he would appear in person or participate by telephone, was then mailed to Mr. G..<sup>17</sup> No response was received from Mr. G.

Mr. G. could not be reached at his phone number of record on November 1, 2005, at the scheduled hearing time.<sup>18</sup> The November 1 hearing was continued to the next day because of

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<sup>7</sup> November 2, 2005 Hearing Recording (testimony of Heath Franklin of University of Alaska Anchorage Student Housing).

<sup>8</sup> April 15, 2005 Letter from Janice Pearce.

<sup>9</sup> July 28, 2005 Letter from Janice Pearce.

<sup>10</sup> August 23, 2005 Notice of Defense.

<sup>11</sup> September 15, 2005 Letter from Ardith Lynch.

<sup>12</sup> September 30, 2005 Scheduling Notice.

<sup>13</sup> October 14, 2005 Prehearing Conference Recording.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> October 17, 2005 Prehearing Order and Notice of Hearing at 1.

<sup>17</sup> *Id.* at 1-3.

<sup>18</sup> November 2, 2005 Hearing Recording.

difficulties with phone connections.<sup>19</sup> At the hearing on November 2, 2005, the University was represented by Ms. Lynch.<sup>20</sup> Mr. G. again could not be reached at his phone number of record,<sup>21</sup> so the hearing was conducted without his participation.<sup>22</sup>

At the November 2, 2005, hearing Heath Franklin, from University of Alaska Anchorage Student Housing, testified that Mr. G. had entered into a University of Alaska Anchorage Housing and Dining Agreement, but had not checked-in to University Housing prior to the start of classes.<sup>23</sup> Stuart Roberts, from University Financial Services, testified that the current balance on Mr. G.'s account then was \$400.00.<sup>24</sup> Documentation of Mr. G.'s debt to the University was entered into evidence.<sup>25</sup>

### **III. Discussion**

The University may take an individual's PFD if any charge to that individual for tuition or fees is in default.<sup>26</sup> Once the University has provided proper notification of its claim against an individual's PFD, the individual has the burden of refuting the University's claim.<sup>27</sup> The individual may do this by showing one of only three things: (1) the University did not send a notice of default in compliance with the law, (2) the notice of default has been rescinded, or (3) "the amount owed by the individual is less than the amount claimed from the [PFD]."<sup>28</sup> Mr. G.'s Notice of Defense claims the third, that the amount he owes the University is less than the amount claimed from his PFD.<sup>29</sup> Mr. G., therefore, initiated a hearing process by filing the Notice of Defense and assumed the burden of proving that he owes less money to the University than the University is claiming from his PFD.

The University has provided documentation indicating that Mr. G. owes the University \$400.00. Mr. G.'s signature on his University of Alaska Anchorage Housing and Dining

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> AS 44.62.530 states that in an administrative adjudication if "the respondent does not . . . appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence."

<sup>23</sup> November 2, 2005 Hearing Recording.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* Documents entered into evidence include: (1) University of Alaska Anchorage Housing and Dining Agreement signed by Mr. G., (2) Academic Calendar, (3) University of Alaska Transaction Summary Report showing a \$400.00 balance on Mr. G.'s account, (4) computer printout indicating when documents were sent to Mr. G., (5) Letter from Janice Pearce to Mr. G. dated April 15, 2005, (6) Letter from Janice Pearce to Mr. G. dated July 28, 2005, (7) Notice of Defense from Mr. G. dated August 23, 2005, (8) Letter from Ardith Lynch to Mr. G. dated September 15, 2005.

<sup>26</sup> AS 14.40.251(a); AS 43.23.073(a).

<sup>27</sup> AS 43.23.073(c).

<sup>28</sup> *Id.*

Agreement shows that Mr. G. agreed to the contract's provisions concerning charges he would have to pay to the University if he sought to be released from the contract before the end of the 2004-2005 academic year.<sup>30</sup> Mr. Franklin's testimony stated that Mr. G. did not cancel his room reservation and did not check-in to University Housing.<sup>31</sup> The Mid-Term Release Schedule on the University of Alaska Anchorage Housing and Dining Agreement states that when a student does not cancel a room reservation and does not check-in prior to the start of classes, the University may charge that student an \$800.00 room charge and a \$150.00 meal charge.<sup>32</sup> The University has indicated that it chose to charge Mr. G. a lesser fee to reduce the hardship upon him.<sup>33</sup> Mr. Roberts' testimony, as well as documentary evidence, indicated that Mr. G.'s current account balance is \$400.00.<sup>34</sup> Mr. G. has not presented any evidence to show that he owes less than the \$400.00 claimed by the University.

The University is entitled to take from Mr. G.'s PFD only as much as the amount of the charges, owed by Mr. G. to the University, which are in default.<sup>35</sup> The amount claimed by the University from Mr. G. is less than the amount of Mr. G.'s 2005 PFD.<sup>36</sup> Thus, the University is entitled to only \$400.00 of Mr. G.'s PFD.

The University has shown that, more likely than not, Mr. G.'s account with the University is in default in the amount of \$400.00, and the University has provided Mr. G. with proper notification of its intent to make a claim on his PFD.<sup>37</sup> The University, therefore, is entitled to \$400.00 of Mr. G.'s PFD.

#### **IV. Conclusion**

The law allows the University to claim money from Mr. G.'s PFD if any charges for fees owed by Mr. G. to the University are in default. The University has shown that, more likely than not, Mr. G.'s account with the University is in default in the amount of \$400.00, and that the University has provided Mr. G. with proper notification of its intent to make a claim on his PFD.

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<sup>29</sup> August 23, 2005 Notice of Defense.

<sup>30</sup> April 7, 2004 University of Alaska Anchorage Housing and Dining Agreement.

<sup>31</sup> November 2, 2005 Hearing Recording (testimony of Heath Franklin).

<sup>32</sup> See April 7, 2004 University of Alaska Anchorage Housing and Dining Agreement.

<sup>33</sup> October 3, 2005 Summary of University of Alaska Claim Upon J. G. PFD.

<sup>34</sup> November 2, 2005 Hearing Recording (testimony of Stuart Roberts); September 2, 2005 University of Alaska Transaction Summary Report.

<sup>35</sup> See AS 43.23.073.

<sup>36</sup> The 2005 PFD amount was \$875.76. See Attachment 1, pp. 1-2.

<sup>37</sup> July 28, 2005 letter from Janice Pearce.

Mr. G. has provided no evidence refuting the University's claim. The University, therefore, is entitled to \$400.00 of Mr. G.'s 2005 PFD.

DATED this 21<sup>st</sup> day of June, 2006.

By: Signed  
Terry L. Thurbon  
Chief Administrative Law Judge

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

**SEE NON-ADOPTION #2 BELOW**

**Adoption**

The undersigned, on behalf of the University of Alaska 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 31<sup>st</sup> day of July, 2006.

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

### Non-Adoption Options

1. The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about \_\_\_\_\_;

make additional findings about \_\_\_\_\_;

conduct the following specific proceedings: \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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2. The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

**The University has shown that it is more likely than not that Mr. Gregory is in default on the \$400.00 he owes and was properly notified of the University's intention to take that amount from his 2005 and future PFDs.**

**This finding is based on the April 15, 2005 Notice of Default, the July 28, 2005 Notice of PFD Claim, and the Notice of Defense form.**

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 31<sup>st</sup> day of July, 2006.

By: Signed \_\_\_\_\_

Signature

Elaine P. Maimom, Ph.D. \_\_\_\_\_

Name

Chancellor \_\_\_\_\_

Title

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