

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE UNIVERSITY OF ALASKA**

In the Matter of the _____)
C. A. P.) OAH No. 06-0585-PFE
_____)

**DECISION & ORDER
GRANTING MOTION FOR SUMMARY ADJUDICATION**

I. Introduction

C. A. P. (formerly known as C. U.) submitted a Notice of Defense requesting a hearing on the University of Alaska’s claim against her 2006 and future permanent fund dividends (PFDs).¹ The matter was referred to the Office of Administrative Hearings. The University moved for summary adjudication, seeking payment of \$320.50.² Ms. P. did not oppose the motion. The motion, therefore, should be granted and the University should be permitted to collect \$320.50 from one or more of Ms. P.’s future PFDs if she has not satisfied the debt in the meantime.

II. Facts

On January 30, 2001, Ms. P. entered into an agreement to pay a \$751.50 tuition and fees balance by making three payments of \$250.50 each in the months of February, March and April 2001.³ Ms. P. made four payments of \$125.25 each during those three months.⁴ This left a \$250.50 balance. Two charges of \$35 each for late fees were assessed for March and April 2001.⁵

The University’s transaction summary report suggests that as of April 10, 2002, Ms. P. either owed a balance of \$320.50 or was given a credit of \$320.50, leaving her with a zero balance account.⁶ Four years later, in a letter dated May 12, 2006, the University declared that

¹ July 6, 2006 Notice of Defense Request for Hearing on PFD Claim (University’s Exhibit 13, p. 1).
² The University initially claimed \$478.58. *See* May 12, 2006 Notice of Default (University’s Exhibit 10); June 26, 2006 Notice of PFD Claim (University’s Exhibit 12). The affidavit supporting the University’s summary adjudication motion, however, asserts that Ms. P.’s indebtedness is only \$320.50. October 5, 2006 Affidavit of Matthew Seymour at ¶ 3.
³ January 30, 2001 Tuition Deferment and/or Emergency Loan Contract (University’s Exhibit 2).
⁴ July 31, 2006 University of Alaska Student Trans Summary Report 30578685 (University’s Exhibit 8, p. 1); *also* University’s Exhibit 2, p. 2 (receipt for March 26, 2001 payment); Exhibit 3 (receipt for February 20, 2001 payment); Exhibit 4 (receipt for February 27, 2001 payment). A separate receipt for the April 2001 payment was not included in the record, but since the University acknowledges receipt of such a payment, the transaction summary report entry will be considered sufficient to establish that four, not just three, \$125.25 payments were made by Ms. P.
⁵ July 31, 2006 University of Alaska Student Trans Summary Report 30578685 (University’s Exhibit 8).
⁶ *Id.* Whether the \$320.50 figure is a debt or a credit is unclear because the report lists a negative (-320.50) figure under the “charge” column, across from the entry date 10-APR-02, and it shows a zero balance at the top. Elsewhere in the report, negative figures appear to be credits, such as for payments made. The University’s Exhibit 9 suggests

Ms. P.'s "account for tuition, fees or other charges" was "in default in the amount of \$478.58" and stated that the University would take Ms. P.'s PFD if the account were not paid in full.⁷ The University's exhibits do not indicate how the zero balance or \$320.50 debt came to support a claim for \$478.58 against Ms. P.'s PFD. It is also unclear from the record whether the University in fact sent the Notice of Default letter to Ms. P.⁸

On June 26, 2006, the University sent Ms. P. a separate notice to the effect that it had filed a claim against her PFD in the amount of \$478.58.⁹ More likely than not, Ms. P. received that notice because she completed and returned a hearing request form, and such a form had been included with the June 26th notice.¹⁰

On her hearing request form, Ms. P. marked two grounds for asserting that the University had wrongly claimed her PFD: (1) that the University had "not sent a Notice of Default in compliance with AS 43.23.073(c)(1)"; (2) that the amount she owes is less than the amount claimed from her PFD.¹¹ She explained:

I have no information about this debt. I have recived [sic] no notice, nor have I attended UAF in years. If they can supply information, proving I owe, I would be happy to pay. Also, the PFD is expected to be more than what they think I owe. Please send a bill and payment info.^[12]

A prehearing conference was scheduled for October 3, 2006.¹³ Ms. P. could not be reached at her telephone number of record for the prehearing conference; a message was left for her on the answering machine.¹⁴ The prehearing order that followed set a hearing date, gave notice that the University had indicated it might file a motion for summary adjudication, and

that \$320.50 may have been "written off" on or before March 7, 2002, but nothing else in the record other than the coincidence of the amount and nearness of the two dates (March 7 to April 10) shows a connection between the "written off" notation and the zero balance on the report.

⁷ May 12, 1006 Letter from University of Alaska Fairbanks Collections (University's Exhibit 10).

⁸ The Seymour affidavit submitted by the University in support of its motion for summary adjudication states that "a Notice of Default was mailed to C. U. at the address obtained from her 2006 PFD application" on May 12, 2006, and that it was returned as undeliverable. Affidavit of Matt Seymour at ¶ 5. It asserts that Exhibits 10-12 are true and correct copies of the relevant records. The University's Exhibit 11 is a copy of an envelope mail meter stamped May 12, 2006, and postmarked returned to sender May 25, 2006, with an "undeliverable as addressed" postal stamp. The envelope copy submitted as the exhibit, however, does not show who the addressee was or to which address the envelope was directed.

⁹ June 26, 2006 Letter from Matt Seymour (University's Exhibit 12, p. 1).

¹⁰ See July 10, 2006 Notice of Defense Request for Hearing on PDF Claim (University's Exhibit 13); June 26, 2006 Letter from Matt Seymour (University's Exhibit 12, p. 1) (instructing Ms. P. that she could "complete and sign the enclosed form" to request a hearing).

¹¹ July 10, 2006 Notice of Defense Request for Hearing on PFD Claim (University's Exhibit 13, p. 1).

¹² *Id.*

¹³ September 11, 2006 Scheduling Notice.

¹⁴ October 3, 2006 Recording.

provided a period for Ms. P. to respond in the event the University filed such a motion.¹⁵ Before Ms. P. would have received the prehearing notice, she telephoned the Office of Administrative Hearings and left a message to the effect that she might withdraw her appeal.¹⁶

The University filed a motion on October 9, 2006, seeking summary adjudication on its \$320.50 claim against Ms. P.'s PFD.¹⁷ Ms. P. filed no written response. The hearing was convened by teleconference on October 27, 2006. Ms. P. could not be reached at her telephone number of record and did not provide an alternate number or otherwise arrange to appear for the hearing. She did not take the opportunity of the telephonic hearing to respond to the University's motion. The motion was unopposed.

III. Discussion

The University may take an individual's PFD if any charge to that individual for tuition or fees is in default.¹⁸ 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.¹⁹ 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]."²⁰ Ms. P. invoked the first and third grounds in her hearing request. She, therefore, initiated a hearing process in which she assumed the burden of proving that the University did not send the notice in compliance with law and/or that she owes less money to the University than the University is claiming from her PFD.

Ms. P. did not take up her burden. She filed nothing other than the hearing request and did not oppose the University's motion for summary adjudication. Under 2 AAC 64.250(b)

[i]f a motion for summary adjudication is supported by an affidavit or other documents establishing that a genuine dispute does not exist on an issue of material fact, to defeat the motion a party may not rely on mere denial but must show, by affidavit or other evidence, that a genuine dispute exists on an issue of material fact for which an evidentiary hearing is required.

¹⁵ October 4, 2006 Prehearing Order and Notice of Hearing (distributed on October 5, 2006).

¹⁶ See October 5, 2006 File Note.

¹⁷ October 5, 2006 Motion for Summary Adjudication at p. 3 (receive stamped at the Office of Administrative Hearings on October 9, 2006).

¹⁸ AS 14.40.251(a); AS 43.23.073(a).

¹⁹ AS 43.23.073(c).

²⁰ *Id.*

The University's motion was supported an affidavit testifying to the authenticity of documents in the record and that the University sent the May 12, 2006 Notice of Default to Ms. P. at her Middleburg, Florida, address but that it came back as undeliverable.²¹ The affidavit testimony also asserts that the unpaid balance on Ms. P.'s account with the University is \$320.50.²²

Even though documents in the record, particularly the transaction summary report, the two notice letters and the May 12, 2006 envelope on which no name or address appears, raise questions about key assertions underlying the University's claim, Ms. P. made no effort to refute the affidavit evidence. She filed no response to the motion at all. Such a failure to participate in and of itself could be grounds for dismissal of the appeal Ms. P. filed or for a decision on the record, including affidavits.²³ Instead, since Ms. P. did not oppose the University's motion or make any attempt to refute the affidavit evidence, the facts asserted in that motion and its supporting affidavit are undisputed and thus will be treated as established.

IV. Conclusion

The University seeks to collect less than the \$478.58 amount initially claimed in the May and June 2006 notices. Ms. P. did not oppose the University's motion for summary adjudication. Thus, whether the University in fact sent the Notice of Default to Ms. P.'s correct address is no longer in dispute. Similarly, Ms. P. has not disputed the University's now-reduced claim of \$320.50. Accordingly, the University's motion for summary adjudication is granted. The University is entitled to collect a maximum total of \$320.50 from one or more of Ms. P.'s future PFDs, unless Ms. P. first satisfies the \$320.50 debt through other means.

DATED this 6th day of June, 2007.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

²¹ Affidavit of Matt Seymour at ¶¶ 3, 4 & 5.

²² *Id.* at ¶ 3.

²³ See 2 AAC 64.320(a)&(d) (authorizing dismissal for failure to participate by the party who initiated the appeal and indicating that to "participate" a person must "appear in person, by telephone, or in writing at the hearing or other proceeding that could have the effect of disposing of issues in the case"); AS 44.62.530 (Administrative Procedures Act default provision under which the failure to participate by the person who requested a hearing and who bears the burden of proof leaves the agency with the option to decide the matter on the existing record, including affidavits, without conducting an evidentiary hearing).

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 9th day of July, 2007.

By: Signed
Signature
Stephen B. Jones
Name
Chancellor
Title

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