

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

IN THE MATTER OF)
)
 W. R.)
)
 _____)

Case No. OAH-06-0703-PFE
ACPE Case No. 5240279346

DECISION

I. Introduction

The appellant, W. R., appeals a claim on his permanent fund dividend by the Alaska Commission on Postsecondary Education (ACPE). Administrative Law Judge Dale Whitney heard the appeal on November 15 and 30, 2006. Julie Banfield represented the ACPE. Ms R. appeared by telephone. The administrative law judge finds that Ms. R. has not met her burden of proving that the ACPE’s action was in error.

II. Facts

The ACPE has claimed Ms. R.’ 2006 permanent fund dividend for application against a defaulted Alaska Education Loan. Mr. R. has not disputed the commission’s assertion that she borrowed an Alaska Education Loan, that she was sent a notice of permanent default, and that the default has not been rescinded. On her Notice of Defense form Ms. R. checked a box indicating that the amount claimed by the ACPE from her dividend was greater than the accelerated balance owed on the loan. The commission presented records showing that at the time it garnished his PFD, Ms. R. owed principal of \$8,350.64 plus accrued interest of \$435.06.

III. Discussion

By law, the commission is allowed to take a student loan borrower’s PFD when the loan is in default.¹ When the commission makes a claim against a PFD, it must provide the borrower with an opportunity for a hearing on the claim, but the grounds on which the borrower can challenge the claim are limited to just three:

1. the commission did not send a notice of default in compliance with the law;
2. the notice of default has been rescinded;
3. “the amount owed by the borrower is less than the amount claimed from the permanent fund dividend.”²

¹ AS 14.43.145(a)(2); AS 43.23.067.

² AS 43.23.067(c).

At a hearing, the borrower has the burden of proving one of these three elements.³

In her appeal, Ms. R. checked the box stating that the amount that the commission claimed was more than she owed. At the hearing, Ms. R. testified that the amount that has been applied to her loan through garnished payments over the years exceeds the original amount of the loan. She asserts that the loan should therefore be considered paid in full. She also testified to the financial hardship she has suffered for a number of years, and asks that she be shown “mercy” in the calculation of her repayment obligation. Ms. R. did allege or provide specific details of the loan or payments made, but generally asserted that the amount she has paid altogether exceeds the original amount of the loan.

ACPE provided a full payment history for the loan. The payment history shows that Ms. R. is correct that a number of very large payments were made over the years, but many of these payments were not applied to her principal. Because of long periods when Ms. R. made no payments at all, large amounts of interest accrued. When payments were made, they were applied first to accrued interest, in accordance with the terms of the loan. Ms. R. argues that it is unfair that her payments should be applied to interest without a reduction in the principal. With this position, Ms. R. overlooks the time value of money, and the fact that for lengthy periods of time she did not make the minimum payments on her loan. Had she done so, interest would not have accumulated, and the principal balance would have steadily declined. Because there were long periods with no payments made toward the interest that accrued each month, large amounts of interest became due in addition to the underlying principal. When a payment was made, it was often not large enough to pay off all of the accrued interest that was due at that time. For this reason, many of Ms. R.’ payments had no impact on the amount of the principal still owing.

While it is easy to sympathize with Ms. R.’ personal situation, the law in this case does not permit waiver of the amounts owed for the loan, either for the principal or the interest. The only issue that may be considered is whether the amount that was taken from Ms. R.’ PFD was more than the amount she owes. Ms. R. has not identified any errors in ACPE’s calculations, and none are apparent from the record.

³ *Id.*

IV. Conclusion

Ms. R. has not met her burden of proving that the amount claimed by the commission was greater than the amount owed. The commission is entitled to maintain the claim on Ms. R.' permanent fund dividend.

DATED this 26th day of February, 2007.

By: Signed
DALE WHITNEY
Administrative Law Judge

Adoption

The undersigned, on behalf of the Alaska Commission on Post Secondary Education 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 30th day of March, 2007.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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