

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

In the Matter of the)
L. M.) OAH No. 06-0707-PFE
_____)

DECISION & ORDER

I. Introduction

L. M. submitted a Notice of Defense requesting a hearing on the Alaska Commission on Postsecondary Education’s claim against her 2006 permanent fund dividend (PFD).¹ The matter was referred to the Office of Administrative Hearings. Ms. M. failed to participate in the hearing. Based on the agency record, as supplemented by additional evidence presented at the hearing, the commission’s claim against Ms. M.’s 2006 PFD is valid. Her debt exceeds the amount of the 2006 PFD. The commission, therefore, would have been entitled to take Ms. M.’s full 2006 PFD if she had been eligible to receive one.²

II. Facts

The commission’s computer records show that as of September 2006, Ms. M. owed the commission \$9,385.90.³ Commission staff did not file any documentary evidence showing when or how Ms. M. was notified of a default in her student loan debt repayment, but Ms. M.’s appeal did not raise an issue concerning notice of default. Instead, Ms. M.’s appeal questions whether the commission’s claim exceeds the amount of her debt.⁴ Specifically, she wrote, “ACPE has taken my P.F.D. for almost 20 years since 1989 so my account should be paid in full.”⁵

A prehearing conference was scheduled for November 9, 2006.⁶ Ms. M. participated telephonically.⁷ During the prehearing conference, Ms. M. said that she had, in effect, been paying on her student loan debt for 17 years through garnishment of her PFDs. She asked that the commission staff provide evidence of where her PFDs have gone for the 17 years. The

¹ September 20, 2006 Notice of Defense at p. 1.

² The commission staff reported receiving notice from the PFD division to the effect that Ms. M. was found ineligible for the 2006 PFD and that the commission, therefore, would not receive any PFD money under its claim against her 2006 PFD. November 30, 2006 Recording of Hearing. The staff expressed a desire to receive a decision on the 2006 PFD claim but agreed that on the existing record it would not be possible to determine whether the commission had provided sufficient notice to adjudicate a claim against future PFDs as well.

³ See September 29, 2006 Screen Print titled “Mast Inquiry” at p. 2 (showing “total payoff” balance of \$9,385.90). By the date of the hearing, the debt had grown to \$9,460.64. November 30, 2006 Record of Hearing, Testimony of Julie Banfield.

⁴ September 20, 2006 Notice of Defense at p. 1.

⁵ *Id.*.

⁶ October 25, 2006 Scheduling Notice.

commission staff indicated that it could provide a payment history showing when the commission had received Ms. M.'s PFD, that the history record showed receipt of the PFD for just two years (2001 and 2002) and that the commission had received a communication from the PFD division indicating that the commission would not receive Ms. M.'s PFD for 2006 because she was not eligible to receive one. The commission staff agreed to provide the payment history; Ms. M. agreed to check with the PFD division, to see if she could learn where her PFDs have gone over the years if not to the commission.

A hearing was scheduled for November 30, 2006.⁸ In advance of the hearing, the commission staff filed a copy of a letter under which it transmitted to Ms. M. the promised payment history.⁹ The payment history shows that the commission recorded receiving just five payments on Ms. M.'s account, only two of which were PFDs.¹⁰ Nothing was filed by Ms. M. on the results of her promised inquiry to the PFD division. At the time set for the hearing, Ms. M. could not be reached at her telephone number of record.¹¹

III. Discussion

The commission is allowed to take a student loan borrower's PFD when the loan is in default.¹² Once the commission has provided proper notification of its claim against a borrower's PFD, the borrower has the burden of refuting the commission's claim.¹³ The borrower may do this by showing one of only three things: (1) the commission 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.¹⁴ Ms. M.'s Notice of Defense invoked the third one—i.e., that the commission was claiming more than she owes because (she believed) the commission had received her PFDs for 17 years.¹⁵

Ms. M. initiated a hearing process by filing the Notice of Defense and assumed the burden of proving that the commission's claim exceeded her debt. She did not take up her burden. She filed nothing other than the hearing request and did not participate in the hearing.

⁷ November 9, 2006 Recording of Prehearing Conference.

⁸ November 13, 2006 Prehearing Order and Notice of Hearing at p. 1.

⁹ See November 20, 2006 Memo and attachments.

¹⁰ *Id.* at p. 4; Banfield Testimony (confirming that the 2002 payment of \$1,532.76 and 2001 payment of \$1,844.28 were PFDs claimed by the commission).

¹¹ November 30, 2006 Recording of Hearing.

¹² AS 14.43.145(a); AS 43.23.067.

¹³ AS 43.23.067(c).

¹⁴ *Id.*

¹⁵ September 20, 2006 Notice of Defense at p. 1.

Under the Administrative Procedures Act, a 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, without conducting an evidentiary hearing, or to decide the case on the record plus additional evidence brought out at a hearing.¹⁶ Though the documentary evidence submitted by the commission staff was sparse and failed to establish that the commission had, in fact, given Ms. M. notice of default on her student loan, she did not dispute any facts other than whether the commission had already collected enough of her PFDs to satisfy the debt. The payment history document and testimony at the hearing shows that the commission collected only two PFDs totaling \$3,377.04 and \$764.32 in other payments.¹⁷ Thus, the agency record and evidence from the hearing shows that the commission has not collected more than Ms. M.'s loan debt. Ms. M.'s remaining debt (\$9,460.64 as of the hearing debt) exceeds the \$1,106.96 amount of the 2006 PFD.

IV. Conclusion

The commission sought to collect some of Ms. M.'s remaining student loan debt by claiming her 2006 PFD. Had Ms. M. been eligible to receive the 2006 PFD, the commission would have been entitled to claim as much of the PFD as was not already garnished by agencies or creditors with higher priority. The commission may be able to claim future PFDs in years when Ms. M. is eligible for them, if she does not satisfy her student loan debt in the meantime. Because the documents filed by the commission staff are insufficient to establish that Ms. M. was given notice of a claim against *future* PFDs for years beyond 2006, however, this decision does not decide whether the commission legally can collect Ms. M.'s future PFDs without first giving her notice and a further hearing opportunity under AS 43.23.067.

DATED this 12th day of June, 2007.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

¹⁶ AS 44.62.530.

¹⁷ The payment history printout, read in light of an attached explanation of codes, shows that the commission has received two bank payments (\$96 and \$192) and an office payment (\$476.32) totaling \$764.32, in addition to the two PFD payments (\$1,532.76 and \$1,844.28).

Adoption

The undersigned, on behalf of the Alaska Commission on Postsecondary 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 11th day of July, 2007.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title