

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

IN THE MATTER OF)
)
 G. H.)
)
 _____)

Case No. OAH-07-0619-PFE
ACPE Case No. 5220287149

DECISION

The Alaska Commission on Postsecondary Education (ACPE) claimed all or a portion of G. H.’s permanent fund dividend. Ms. H. requested a hearing. Administrative Law Judge Dale Whitney heard the case on November 28, 2007. Due Diligence Officer Julie Banfield represented the ACPE by telephone. Ms. H. did not appear. Because Ms. H. has not met her statutory burden of proof, the ACPE is entitled to maintain its claim on Ms. H.’s permanent fund dividend.

I. FACTS

Ms. H. has not presented any evidence. On her Notice of Defense Ms. H. did not check any boxes indicating the basis for her appeal, nor did she write anything in a space provided for “other information.” Ms. Banfield submitted an affidavit stating that Ms. H. owes the ACPE \$23,257.91 in principal and an additional \$3,353.79 in accrued interest, with interest continuing to accrue on a daily basis, for several different loans. Ms. Banfield stated in the affidavit that default notices had been properly served for all of the loans, and that the ACPE has not rescinded any of the default notices.

II. DISCUSSION

By law, the ACPE is allowed to take a student loan borrower’s PFD when the loan is in default.¹ When the ACPE 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 the notice of default has been rescinded;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

There is no facially apparent error in the ACPE's actions leading up to the claim on Ms. H.'s dividend. Having presented no evidence, Ms. H. has not her burden of proving that the ACPE's claim was in error.

III. CONCLUSION

The ACPE sent Ms. H. notices of default for all loans that are the subject of this case, and the notices have not been rescinded. Ms. H. has not proved by a preponderance of the evidence that she owes less the amount that the ACPE has claimed from her dividend. The ACPE is entitled to the claim on Ms. H.'s 2007 or subsequent permanent fund dividends.

DATED this 3rd day of December, 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 9th day of January, 2008.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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

³ *Id.*
OAH No. 06-0619-PFE