

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

In the Matter of)
)
G. B.) OAH No. 07-0631-PFE
) ACPE Case No. 5547263840
_____)

DECISION

I. Introduction

The appellant, G. B., appeals a claim on his permanent fund dividend (PFD) by the Alaska Commission on Postsecondary Education (ACPE). Administrative Law Judge Dale Whitney heard the appeal on January 9, 2008. Mr. B. appeared by telephone. Julie Banfield represented the ACPE by telephone. The administrative law judge finds that Mr. B. has not met his burden of proving that the ACPE's action was in error.

II. Facts

The ACPE has claimed Mr. B.'s 2007 permanent fund dividend for application against defaulted Alaska Education Loans. According to Ms. Banfield's affidavit, Mr. B. owed principal of \$38,876.61 and accrued interest of \$12,520.02 as of October 17, 2007, resulting from seven promissory notes executed between September 1989 and June 1996. The appeal form ACPE had sent Mr. B. contains three paragraphs with bases for appeal with a check box for each paragraph. The three reasons listed for appeal of a claim on a PFD are:

- ACPE has not sent a Notice of Initial Default (notice that my loan(s) is 180 days or more past due) to my address of record at the time of default, as required by Alaska Statute 14.43.145(b);
- The Notice of Default has been rescinded by ACPE after review under Alaska Statute 14.43.145(c) (attach copy of rescission notice); or
- The amount ACPE claimed from my Alaska PFD is greater than the full accelerated unpaid balance on my loan(s).

These paragraphs are followed by a blank space for "additional information."

Mr. B. checked the second box, indicating that the notices of default he had been sent had been rescinded by ACPE after review under AS 14.43.145(c). Mr. B. did not attach a copy of a rescission notice as directed. In the space for "additional information" Mr. B. wrote, "Since about July AK Student Loans has been garnishing 25% of my paycheck from each pay period. This comes out to be over \$500.00 per month."

At the hearing, Mr. B. agreed that the amounts that the ACPE has indicated he owes are correct, and he intends to pay them. Mr. B. testified as follows:

What it comes down to is, here I believe it was approximately July, without notice they decided to start taking money out of my paycheck. The amount of money they are taking is approximately twenty-five percent out of each paycheck out of a pay period, I mean it's not per month it's out of a paycheck. When I contacted them to find out what was actually going on, what took place was they decided they, you know they told me they were going to be garnishing my wages, and they didn't have any way of actually getting them to reimburse that. But, when it came down to the dividend, it was my understanding anyhow, that the dividend wasn't going to be touched since we basically, well, came to the agreement on the garnishment of the wages even though I feel that they are taking way too much out that each check. But, basically, that was my understanding is that because of that agreement, I guess is the way you would put it, is that, you know, my payments are being taken from my paycheck and like I said it's been going on since I believe it's been since July, I might be off on the date, that that was being done in place of anything else. So you know to have that done plus to take the dividend on top of that, that's quite a hunk of money to take away from a person. Unfortunately I'm not one of these types of people that can say that I can actually afford that. I work hard for my money, and in the past when they were taking the dividend that was fine, I was able to adjust to that but my wages weren't being touched, you know, at that point in time. Now that my wages are being touched, you know, I don't make twenty or thirty dollars an hour. I don't have one of those types of jobs. But that's besides the point. I just feel that they needed to do one or the other but to do both that's pretty hard and like I say it was my understanding that because they were garnishing my wages that they weren't going to touch that dividend this year. I think that's about it.

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 after review under Alaska Statute 14.43.145(c);
3. the amount owed by the borrower is less than the amount claimed from the permanent fund dividend.²

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

The ACPE asserts that it sent Mr. B. a Notice of Default for two of the loans on August 30, 1999, and on the remaining five loans on March 1, 2001. Mr. B. did not dispute these facts.

¹ AS 14.43.145(a)(2); AS 43.23.067.

² AS 43.23.067(c).

³ *Id.*

Mr. B. also does not dispute that the amount owing is more than the amount that was taken from his PFD.

Mr. B.'s argument appears to be that when he contacted ACPE, an agreement was reached that ACPE would no longer take his PFDs as it has in the past, and that this agreement amounts to the second statutory basis for challenging the taking of a PFD: the notice of default has been rescinded after review under Alaska Statute 14.43.145(c).

Alaska Statute 14.43.145(c) states that:

A borrower may appeal a notice of default by filing a statement with the executive director, within 30 days after the date of the notice, requesting that the loan status be reviewed. AS 44.62 (Administrative Procedure Act) does not apply to the review of default under this section. The borrower has the burden to show that, at the time of the notice of default, (1) no loan payment was more than 180 days past due or, for a loan under AS 14.43.161 - 14.43.168 or 14.43.170 - 14.43.175, the default requirements established by the commission had not yet been met; or (2) that the borrower entered into, and was in compliance with, a default forbearance agreement with the commission. Within 40 days after receiving a written request for review, the director shall inform the borrower in writing of the executive director's decision. The decision of the executive director is a final decision that may be appealed to the superior court under the Alaska Rules of Appellate Procedure.

In order for Mr. B. to prove that the notices of default had been rescinded in compliance with AS 14.43.145(c), it would be necessary for him to prove that, within thirty days of the dates of the notices, i.e. in 1999 and in 2001, he appealed the notices of default and the executive director had agreed either that the loans were not in default or that Mr. B. had entered into and was in compliance with a default forbearance agreement with the ACPE.

The result of a successful appeal of the notices of default under AS 14.43.145(c) would be that the executive director of the ACPE would have made a determination that the borrower was not in default and that the notices of default must therefore be rescinded. If the loans are not in default, the rights of the ACPE are limited to collecting normal payments on the loans as the payments become due each month. If the loans are in default, the loans are accelerated and the entire amount becomes due immediately. Thus, on defaulted loans the ACPE is entitled to immediately collect any amount it is able to, up to the full amount of principal and interest owing on the loan.

It would seem unlikely that the ACPE would agree to limit its collection efforts to either garnishing wages or garnishing PFDs. The interest rates on these seven loans vary, but none is less than eight percent. Eight percent of \$38,876.61 is \$3,110.13. Thus, if the ACPE only collected one PFD from Mr. B. each year, Mr. B. would go deeper into debt each year, at least

until the value of PFDs started exceeding \$3,110.13. This appears to be the reason that Mr. B. now owes more than \$12,000 in interest in addition to the principal of \$38,876.61. At \$500 per month in wage garnishments, Mr. B. would be paying \$6,000.00 per year, which would pay that year's interest plus a little less than three thousand dollars. This would move Mr. B. ahead each year by about \$2,900, which is not a large amount when one considers the total amount that is immediately due is more than \$51,000.

Even if the ACPE did agree at one point to limit its collection efforts, to successfully challenge the taking of his PFD Mr. B. would have to prove that he went through the process of successfully showing that he was not in default when ACPE sent him the notices of default. Mr. B. has not presented any evidence to show that he appealed the notices of default within thirty days of the time they were sent and that the ACPE in turn rescinded the notices based on a finding that Mr. B. was not in default.

IV. Conclusion

Mr. B. has not met his burden of proving that the commission did not send a notice of default in compliance with the law, that the notice of default has been rescinded after review under AS 14.43.145(c), or that the amount he owed was less than the amount claimed from his permanent fund dividend. The Alaska Commission on Postsecondary Education is therefore entitled to maintain its claim on Mr. B.'s permanent fund dividend.

DATED this 10th day of January, 2008.

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 8th day of February, 2008.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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