



2007. Ms. G. defaulted on the promissory notes on December 31, 2007.<sup>6</sup> As of the date of hearing, Ms. G.'s outstanding balance was \$30,960.53.<sup>7</sup> The 2008 PFD is \$3,269.

Ms. G. testified in detail regarding her current situation. She is single and works hard to provide for her mother and herself. Her salary is already subject to garnishment by the commission. Ms. G. stated that after garnishment, she is left with an amount that barely covers rent and leaves little money for anything else. Her car is in need of repair and she needs to repair her car to be able to continue to work.

Commission employees Claims Specialist, Matthew Fishel, and Ms. Banfield testified regarding the division's use of a program called HELMS<sup>8</sup> to track a borrower's payer status and generate notices. HELMS uses control records to automatically generate letters to the borrower when they are delinquent (30 days past due), in initial default (180 or more days past due), and in full default (270 days past due). After the hearing, Ms. Banfield filed an example of the Initial Default Letter generated by HELMS and a two page computer printout labeled "Notepad Facility."<sup>9</sup>

The Notepad Facility pages have the name "G." and an account key number on the top left. The account key number corresponds to the social security number contained on Ms. G.'s loan applications. Ms. G. has not challenged the commission's assertion that this is the commission's record of her account.

While testifying, Ms. Banfield and Mr. Fishel were looking at Ms. G.'s account. They testified that per the commission's record of activity on Ms. G.'s account, on October 1, 2007, an Initial Default Letter was mailed to Ms. G. at her address of record. Ms. G. confirmed that the address to which the letter was mailed was the correct address, however, she denies having received the notice. In the alternative, should it be determined that the Notice of Initial Default was sent, Ms. G. questions whether the commission has the authority to take that portion of her PFD funded from the Alaska resource rebate.

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<sup>6</sup> Affidavit of Julie Banfield.

<sup>7</sup> As of the date of hearing, Ms. G. owed \$30,869.35 in principal and \$91.18 in interest. Testimony of Banfield.

<sup>8</sup> Higher Education Loan Management Systems (HELMS).

<sup>9</sup> See Order Granting Leave To File Post Hearing Brief And Exhibits And Order Providing An Opportunity To Respond November 7, 2008.

### III. Discussion

Ms. G.'s appeal raises two issues: (1) did the commission fail to send her notice of default such that it cannot claim her 2008 PFD and (2) even if the commission can claim her PFD, is it precluded from claiming the portion attributable to the special Alaska resource rebate? The first issue is a factual one and will be decided based on the evidence, and on whether Ms. G. met her burden of proof.<sup>10</sup> The second issue is purely legal and will be decided using principles of statutory interpretation.

#### A. *The Commission Can Claim Ms. G.'s 2008 PFD*

The commission has legal authority to take a student loan borrower's PFD when the loan is in default.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> Ms. G.'s Notice of Defense claimed the first, that the commission did not send her a notice of default.<sup>14</sup>

Ms. G. testified that she did not receive the notice. The issue is not whether the borrower *received* the Notice of Initial Default. Rather, the issue is whether it is more likely than not that the commission failed to *send* the notice. Though evidence that the borrower did not receive the notice may raise a question about whether it was actually sent, such evidence is not conclusive proof that the notice was not sent.

Ms. Banfield and Mr. Fishel testified that on October 1, 2007, according to Ms. G.'s account history, HELMS generated an initial default letter on October 1, 2007, which would have been mailed to Ms. G. at the address of record. The address of record is the correct mailing address for Ms. G. When balanced against the evidence presented by the

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<sup>10</sup> AS 43.23.067(c) (providing that "the borrower has the burden to show" one of three reasons why the commission cannot claim the PFD). "Unless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing..., and the standard of proof is preponderance of the evidence. To prove a fact by a preponderance of evidence, a party with the burden of proof must show that the fact more likely than not is true." 2 AAC 64.290(e).

<sup>11</sup> AS 14.43.145(a); AS 43.23.067.

<sup>12</sup> AS 43.23.067(c).

<sup>13</sup> *Id.*

<sup>14</sup> September 4, 2008 Notice of Defense.

commission, Ms. G.’s testimony that she did not receive the notice does not prove that more likely than not the commission failed to send the required notice. The commission, therefore, properly claimed Ms. G.’s 2008 PFD.

B. *The Resource Rebate Is Part Of The PFD That Can Be Claimed*

Ms. G. questioned whether the commission could claim that portion of her 2008 PFD that was designated as her “Alaska resource rebate.”<sup>15</sup> Through legislation passed in 2008, Alaskans eligible for the 2008 PFD were given \$1200 in addition to the dividend amount calculated in the usual fashion.<sup>16</sup> In pertinent part, the legislation states “[t]o provide residents of the state with an Alaska resource rebate, the amount of the 2008 permanent fund dividend shall be increased.”<sup>17</sup>

The plain language of the law shows that the \$1200 resource rebate increased the amount of the PFD. Though the purpose of adding this fixed amount to the calculated dividend amount was special—i.e., to provide residents extra dividend dollars in times of high energy costs—the law does not separate the \$1200 from the rest of the PFD. Nothing in the statutes that authorize the commission to take a permanent fund dividend from a borrower who is in default on student loans suggests that the amount of the commission’s claim is limited to the usual calculated dividend and does not extend to an additional amount included in a specific PFD payout.<sup>18</sup> The only limitation on how much of a PFD the commission can claim is the amount the borrower owes to the commission on the defaulted loans.<sup>19</sup>

Ms. G.’s argument that the resource rebate portion of the PFD should not have been claimed is inconsistent with the language of the legislation authorizing the addition of the \$1200 to the 2008 PFD and the statutes governing the commission’s claims against PFDs. Accordingly, the commission properly claimed Ms. G.’s entire 2008 PFD because the amount she owed the commission on the defaulted loans exceeded the amount of 2008 PFD, including the resource rebate portion.

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<sup>15</sup> Appendix A.

<sup>16</sup> See 2008 Sess. Law of Alaska, Fourth Special Session, ch. 2, § 5.

<sup>17</sup> *Id.* at ¶ 5(a).

<sup>18</sup> AS 14.43.145(a)(2); AS 43.23.067(a).

<sup>19</sup> See AS 43.23.067(c)(3)&(d) (providing a defense against the commission collected more from a PFD than the borrower actually owes and allowing the commission to amend an overly large claim to the amount established to be owed).

**IV. Conclusion**

Ms. G. has not met her burden of proving that the commission failed to send the notice. The commission is entitled to maintain the claim on Ms. G.'s entire 2008 PFD because the amount she owed the commission on the defaulted loans exceeded the amount of the PFD.

DATED this 9th day of January, 2009.

By: Signed  
Rebecca L. Pauli  
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 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 12th day of February, 2009.

By: Signed \_\_\_\_\_  
Signature  
Diane Barrans \_\_\_\_\_  
Name  
Executive Director \_\_\_\_\_  
Title

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