



2000 – 2005 PFD’s but, according to Ms. Bxxxxx, this it the first time she realized she was in default.

Ms. Banfield testified that the commission had mailed monthly statements and other HELMS generated correspondence to Ms. Bxxxxxx at her address of record and had no knowledge of any mail being returned. Ms. Bxxxxxx testified that she has since moved but, during the relevant time period she did not recall difficulty receiving mail at that address when it was sent. Therefore, she reasons that because she did not receive the notice of default it must not have been sent.

The commission’s computer records show that as of September 12, 2008, Ms. Bxxxxxx’s full accelerated unpaid balance on her seven student loans was \$33,133.14.<sup>6</sup> The 2008 PFD is \$3,269.

### **III. Discussion**

Ms. Bxxxx’s appeal raises the single issue of whether the commission sent her a notice of default in compliance with the law. This is a factual determination and will be decided based on the evidence, and on whether Ms. Bxxxx met her burden of proof.<sup>7</sup>

The commission has legal authority to take a student loan borrower’s PFD when the loan is in default.<sup>8</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>9</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(1) the commission did not send a notice of default in compliance with the law, (2) the notice of default has been rescinded, or (3) the amount owed by the individual is less than the amount claimed from the PFD.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>10</sup> Ms. Bxxxxxx’s Notice of Defense claimed the first, that the commission did not send her a notice of default.<sup>11</sup>

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<sup>6</sup> September 22, 2008 Affidavit of Julie M. Banfield at ¶ 5.

<sup>7</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>8</sup> AS 14.43.145(a); AS 43.23.067.

<sup>9</sup> AS 43.23.067(c).

<sup>10</sup> *Id.*

<sup>11</sup> September 8, 2008 Notice of Defense.

Ms. Bxxxxx 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 does not establish that it is more likely than not that the notice was not sent.

Ms. Banfield testified that according to Ms. Bxxxxx's account history, HELMS generated an initial default letter on June 30, 2000, which would have been mailed to Ms. Bxxxxx at the address of record. The address of record is the correct mailing address for Ms. Bxxxxx. When balanced against the evidence presented by the commission, Ms. Bxxxxx'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. Ms. Bxxxxx has not challenged the division's assertion that her outstanding debt exceeds the amount of the 2008 PFD. Therefore, the commission properly claimed Ms. Bxxxxx's 2008 PFD.

#### **IV. Conclusion**

Ms. Bxxxxx has not met her burden of proving that the commission failed to send the notice of default as required by law. Therefore, the commission is entitled to maintain the claim on Sxx L. Bxxxxx's 2008 PFD.

DATED this 16th 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 18th 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.]