

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

In the Matter of)
K. A. G.) OAH No. 08-0526-PFE
_____) Agency No. 5345253746

DECISION

I. Introduction

The Alaska Commission on Postsecondary Education claimed K. A. G.'s 2008 permanent fund dividend (PFD). Ms. G. appealed by submitting a Notice of Defense and requesting a hearing on the claim against her 2008 PFD.¹ The telephonic hearing was held October 23, 2008. Ms. G. participated and Julie Banfield represented the commission staff.

Because Ms. G. has not shown that the commission's claim is for more than the amount due, the appeal is denied.

II. Facts

On September 4, 2008, Ms. G. signed a Notice of Defense requesting a hearing on the matter of the commission's claim against her 2008 PFD.² Ms. G. checked the box on the Notice of Defense form asserting that "the amount ACPE claimed from [Ms. G.'s 2008 PFD] is greater than the full accelerated unpaid balance on [her] loans."³

Ms. G. executed two promissory notes payable to the commission.⁴ She defaulted on the promissory notes on May 22, 1996.⁵ As of September 12, 2008, the outstanding balance was \$5,730.86.⁶ The 2008 PFD is \$3,269.

III. Discussion

The commission is allowed to take a student loan borrower's PFD when the loan is in default.⁷ 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.⁸ The borrower may do this by showing one of only three things: (1) the commission did not send a notice of default in

¹ September 4, 2008 Notice of Defense.

² *Id.*

³ *Id.*

⁴ Exhibit A; Exhibit B.

⁵ Affidavit of Julie Banfield.

⁶ Principal of \$5,725.85 and accrued interest through September 12, 2008 in the amount of \$5.01. Affidavit of Julie Banfield.

⁷ AS 14.43.145(a); AS 43.23.067.

⁸ AS 43.23.067(c).

compliance with the law, (2) the notice of default has been rescinded, or (3) the amount owed by the individual is less than the amount claimed from the PFD.⁹

Ms. G. does not dispute that commission provided notice of default and that it has not rescinded the notice. She does not dispute that the amount claimed is less than the full accelerated unpaid balance on her loans.¹⁰ Rather, Ms. G. argues that she needs her PFD and taking her PFD will be of little benefit to the commission because at the present garnishment rate the promissory notes will be satisfied by June 2009.¹¹ She described the substantial hardships she has endured in recent years. However, hardship is not one of the three statutory grounds upon which the commission's claim may be challenged. The statute leaves no discretion in this matter.

IV. Conclusion

It is undisputed that the amount owed was greater than the PFD claimed. The commission is entitled to maintain the claim on Ms. G.'s permanent fund dividend.

DATED this 28th day of October, 2008.

By: *Signed*
Rebecca L. Pauli
Administrative Law Judge

⁹ *Id.*

¹⁰ G. Testimony.

¹¹ *Id.*; Notice of Defense.

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 26th day of November, 2008.

By: *Signed*
Diane Barrans
Name
Executive Director
Title

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