

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

IN THE MATTER OF )  
 )  
 J. M. ) Case No. OAH-08-0528-PFE  
\_\_\_\_\_ ) ACPE Case No. 9040584471

**DECISION**

**I. Introduction**

The appellant, J. M., appeals a claim on his permanent fund dividend (PFD) by the Alaska Commission on Postsecondary Education (“the commission”). Administrative Law Judge Dale Whitney heard the appeal on November 18, 2008. Julie Banfield represented the ACPE by telephone. Mr. M. did not appear.

Mr. M. has not met his burden of proving that the ACPE failed to send a notice of default in compliance with the law, that the notice of default had been rescinded, or that the amount owed was less than the amount taken from the PFD.

**II. Facts**

The commission has claimed Mr. M.’s 2008 permanent fund dividend for application against a defaulted Alaska Education Loan. The appeal form that the commission had sent to Mr. M. contained three 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- The Notice of Default has been rescinded by ACPE after review under Alaska Statute 14.43.145(c) (attach copy of rescission notice); or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. M. checked the first two boxes, and accompanied his appeal request with a letter recounting the history of his efforts to repay the loans and stating that “I would like to figure out how this process is supposed to work.” The commission asserts that Mr. M. owed principal of \$5,803.93 as of September 12, 2008, along with interest of \$132.44. The commission asserts that it did properly send notices of default, and that it did not rescind the notices. Mr. M.

checked the two boxes on the form, but he did not provide any evidence to suggest that the commission failed to send notices of default, that it rescinded the notices, or that the accelerated amount owed was less than the amount taken by the commission from Mr. M.'s PFD.

### **III. Discussion**

By law, the commission is allowed to take a student loan borrower's PFD when the loan is in default.<sup>1</sup> 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;
3. "the amount owed by the borrower is less than the amount claimed from the permanent fund dividend."<sup>2</sup>

At a hearing, the borrower has the burden of proving one of these three elements.<sup>3</sup> Mr. M. has not provided any evidence at all, and there are no facially apparent errors in the commission's action. Under these circumstances, it cannot be said that Mr. M. has met his burden of proof.

### **IV. Conclusion**

Mr. M. 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, or that the amount he owed was less than the amount claimed from his permanent fund dividend. The Alaska Commission on Postsecondary Education is entitled to maintain the claim on Mr. M.'s permanent fund dividends.

DATED this 30th day of December, 2008.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

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<sup>1</sup> AS 14.43.145(a)(2); AS 43.23.067.

<sup>2</sup> AS 43.23.067(c).

<sup>3</sup> *Id.*

## 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 2nd day of January, 2009.

By: Signed  
Signature  
Diane Barrans  
Name  
Executive Director  
Title

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