

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

IN THE MATTER OF)
)
 D. L.) Case No. OAH-08-0529-PFE
) ACPE Case No. 9631519899
_____)

DECISION

I. Introduction

The appellant, D. L., appeals a claim on her permanent fund dividend (PFD) by the Alaska Commission on Postsecondary Education (“the commission”). Ms. L. and commission Due Diligence Officer Julie Banfield both appeared by telephone at a prehearing conference on October 8, 2008. The parties agreed that there are no material issues of fact, and that the case may be resolved on the record without further evidentiary hearings.

Because the commission is authorized by law to collect student loans by different methods simultaneously, and because the commission is not time-barred from collecting Ms. L.’s student loan, the commission’s action is affirmed.

II. Facts

Ms. L. signed a promissory note for \$6,000.00 on November 30, 1984. At some point before 1987, Ms. L. defaulted on the loan.¹ The commission sent Ms. L. a notice of default, and the commission has not rescinded the notice.

On January 11, 1987, the commission transferred the loan to a collection agent. This agent obtained a judgment against Ms. L. for the remaining balance of the loan and interest. From 1987 through 2001, the collection agent garnished Ms. L.’s entire PFDs. The commission’s printout of account activity shows that the collection agent withheld amount of between approximately \$30 and \$80 over those years, apparently to pay fees and collections costs. On February 1, 2001, the commission’s contract with the collection agent expired, and the

¹ Ms. L. does not dispute that she defaulted on the loan and she has not challenged the commission’s assertion that it sent her notice of the default, but it is not clear when the default occurred. Ms. Banfield stated in an affidavit that Ms. L. defaulted on November 8, 1995, and that the account was subsequently transferred to a collection agent on January 11, 1987. This obvious error may have been typographical; there is no evidence in the record indicating when Ms. L. defaulted or when the commission sent her notice of default other than Ms. Banfield’s affidavit. Except for a statement from Ms. Banfield that “I have personal knowledge of the matters stated in this affidavit,” there is no evidentiary basis to evaluate Ms. Banfield’s assertions regarding the date of default and issuance of notice of default. The commission’s printout of account activity shows that Ms. L. made no payments on the loan until the collection agent began garnishing PFDs in 1987.

commission began servicing the loan itself. More recently, the commission has again contracted with a third-party vendor to service the loan, but the commission also claimed Ms. L.'s 2008 permanent fund dividend.

III. Discussion

By law, the commission is allowed to take a student loan borrower's PFD when the loan is in default.² 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."³

At a hearing, the borrower has the burden of proving one of these three elements.⁴

Ms. L. argues that the amount she owes is less than the amount the commission has claimed from her PFD. Ms. L. advances several arguments to support her position that she owes the commission nothing at this point.

First, Ms. L. argues that in general so much time has gone by that the commission should no longer be able to collect on the note. Ms. L. does not cite any law to support this assertion. Statutes of limitation bar recovery in court after periods of time that vary according to the nature of the obligation.⁵ The commission points out that the Supreme Court has stated in *Koss v. Koss*⁶ that administrative remedies, such as taking a PFD, are available to the commission in addition to remedies provided by the court. The legislature does not appear to have specified any time after which the commission is barred from using administrative remedies to enforce repayment of a student loan. As the commission has been collecting some amount from Ms. L. almost every year since default, there is no indication that the commission at any time abandoned its right to seek repayment.

Ms. L. next argues that the commission may not enforce its right to repayment by taking her PFD because the account has been referred to a collection agency for servicing.

² AS 14.43.145(a)(2); AS 43.23.067.

³ AS 43.23.067(c).

⁴ *Id.*

⁵ AS 09.10.010 - 240.

⁶ *Koss v. Koss & State, Dept. of Revenue, CSED*, 981 P.2d 106 (Alaska 1999).

Again, Ms. L. cites no legal basis for this argument. The commission points out that the law provides a number of different methods for it to recover student loan repayments, and there appears to be no rule limiting the commission to employing only one method at a time.⁷ The commission is correct that it may make claims on PFDs even for accounts that have been referred to third party agents for servicing or collection action.

Finally, Ms. L. argues that the amounts that the commission has already claimed from her past permanent fund dividends are enough to pay the entire principal and interest on the loan, and that she should be in an overpayment status at this point. Ms. L. has submitted her calculation of the declining balance in a submission dated November 1, 2008.

Ms. L.'s calculations contain three errors. First, the calculations do not account for compounding of interest. For example, Ms. L. calculates that her total balance due at the beginning of 1986 was \$6,100, a hundred dollars over the original principal amount of \$6,000. Ms. L. did not make any payment in 1986. She calculates interest due for 1986 to be \$300, based on five percent of the original principal of \$6,000, with a final balance at the end of 1986 of \$6,400. This calculation does not take into account interest on the \$100 of unpaid interest from the previous year. It also overlooks that interest may have been compounded more frequently than once per year, so if no interest was paid during a year the total interest that would accrue would be more than the annual rate.

Second, Ms. L. calculates interest at five percent for the entire period since the loan went into repayment. The promissory note clearly states on its face that the rate will be five percent after the beginning of the repayment period, and ten percent for any time the loan is in default. Since the loan has been in default since before 1987, and possibly as early as 1985, Ms. L.'s calculations will understate the amount of interest accruing by more than half. Ms. Banfield has stated that the commission might currently be calculating interest at five percent, even though it is entitled to ten percent, but that during the period from January 11, 1987 to February 1, 2001, interest was calculated at ten percent. Thus, even if interest is now being calculated at five percent, interest will be accruing on a balance that is made up in part of interest that accrued at the higher rate and has not been paid yet.

Finally, Ms. L. has failed to calculate collection costs and legal fees that may have accrued while the collection agent was pursuing the matter in court. The record does not contain an accounting of such costs during the period from 1987 to 2001 that the account was in

⁷ AS 14.43.145 – 155.
OAH No. 08-0529-PFE

collection, but it is likely such fees were charged. Ms. L. has not challenged the commission's, or the collection agent's, authority to collect such costs under the regulations that governed student loans at the time the loan was issued.

Ms. L. has not explained what errors may exist in the commission's account history. No errors are immediately apparent on the face of the history, which shows a loan balance of \$4,563.22 at some point around the middle of September, 2008.

IV. Conclusion

Ms. L. has not met her burden of proving that the amount she owed was less than the amount claimed from her permanent fund dividend. The Alaska Commission on Postsecondary Education is entitled to maintain the claim on Ms. L.'s permanent fund dividends.

DATED this 29th day of January, 2009.

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 10th day of March, 2009.

By: Signed _____
Signature
Diane Barrans _____
Name
Executive Director _____
Title

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