

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE UNIVERSITY OF ALASKA**

IN THE MATTER OF)
)
 M. K. H.) OAH No. 09-0478-PFE
_____)

DECISION

I. Introduction

M. K. H. appeals the University of Alaska, Fairbanks' (the University) claim against her future Alaska Permanent Fund Dividends (PFDs).¹ A telephonic hearing was held on October 21, 2009. Ms. H. did not participate.² Attorney Michael O'Brien represented the University. Because Ms. H. has not met her burden of proof under AS 43.23.073(c), her appeal is denied and the University entitled to claim a maximum of \$1,148 against Ms. H.'s future PFDs until the claim is satisfied by collection from dividend or otherwise.³

II. Facts

On July 30, 2008, Ms. H. registered for six credits in the 2008 fall term using her on-line account.⁴ Her tuition and fees totaled \$948 and were due September 12, 2008.⁵

The University's 2008 fall term classes began on September 4, 2008. September 12, 2008 was the deadline for a full refund of tuition and fees to students who withdraw. Fifty percent refunds of tuition only were allowed for students who withdrew by September 19, 2008. These dates were published in the University's academic calendar.⁶ The University has no record of Ms. H. withdrawing from or attempting to withdraw from the class.⁷ Late fees were assessed increasing the total amount due by \$200 to \$1,148.⁸ A Notice of Default dated May 12, 2009 was sent to Ms. H.⁹

In response, Ms. H. requested her default status be reviewed. In her request for review she highlighted three points: 1) she did not take the classes, 2) she dropped the classes on-line but had a virus in her computer that may have interfered with her attempts to drop the classes,

¹ Exhibit 12.

² A call was placed to Ms. H.'s phone number contained in the file. A voice mail message was left providing the phone number of the OAH. Ms. H. did not call to participate in the hearing.

³ The University originally sought an order directing Ms. H. to file for future PFDs. The University withdrew its request on the record at hearing.

⁴ Exhibit 1.

⁵ Exhibits 2, 4.

⁶ Exhibit 3 at 3.

⁷ Testimony of Data Base Administrator Maureen English.

⁸ Exhibit 2.

⁹ Exhibit 7.

and 3) she was in a custody battle for her daughter during that time.¹⁰ A hearing to review her default status was scheduled for Thursday, June 18, 2009 at 2:00 p.m. Mailing records show the Notice of Hearing was delivered at 5:44 p.m. on June 9, 2009. Ms. H. did not appear at the appointed time and her account remained in default.¹¹

A Notice of PFD Claim dated June 23, 2009 was sent to Ms. H. She timely filed her Notice of Defense and Request for Hearing. The Notice of Defense identifies the three defenses permitted by law:

1. the University did not send a Notice of Default as required by law,
2. the Notice of Default was rescinded by the University, or
3. the amount owed is less than the amount claimed from the PFD.

Ms. H. did not identify which defense she was claiming and instead provided a written explanation again emphasizing that she was going through a difficult time and believed she had dropped the classes but that a virus on her computer must have interfered.

The University presented the testimony of its Data Base Administrator, Maureen English. Ms. English reviewed Ms. H.'s access of her online account and found two dates of access after she registered on July 30, 2008: July 31, 2008 and August 18, 2008. The activity logs for Ms. H.'s account on those dates did not indicate any attempt to withdraw from classes.¹²

III. Discussion

Alaska law provides that tuition, fees and other charges owed by an individual to the University of Alaska are in default if not paid within 180 days.¹³ When an individual is in default to the University, the University is allowed to take the individual's PFD.¹⁴ Once the University has provided proper notification of its claim against the individual's PFD, the individual has the burden of refuting the University's claim.¹⁵ The individual may do this by showing one of only three things: (1) the University 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.¹⁶ The explanation provide by Ms. H. in her Notice of Defense claims that she dropped her classes. This explanation comes closest to the third, that the University did not have the legal authority to garnish her PFD

¹⁰ Exhibit 8.

¹¹ Exhibit 10.

¹² English Testimony.

¹³ AS 14.40.251(a).

¹⁴ AS 14.43.251(a); AS 43.23.073.

¹⁵ AS 43.23.073(c).

because the amount claimed from her PFD is greater than the amount owed, if any. To prevail, Ms. H. would need to establish by a preponderance of the evidence that she had timely withdrawn from the classes.

Ms. H. does not dispute that the University provided notice of default, and that it has not rescinded the notice. She has presented no evidence other than an unsworn written explanation. An unsworn written statement when balanced against the sworn testimony and authenticated records of the University, is insufficient to establish that she did timely withdraw from class. Therefore, Ms. H. is liable for the full amount of the claim.

IV. Conclusion

M. K. H. failed to meet her burden of proof that the amount owed is less than the amount claimed. The University of Alaska is entitled to claim a maximum of \$1,148 against one or more of Ms. H.'s Alaska Permanent Fund Dividends until the claim is satisfied by collection from dividend or otherwise.

DATED this 30th day of October, 2009.

By: _____
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned, on behalf of the University of Alaska 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 December, 2009.

By: Signed _____
Signature
Brian Rogers _____
Name
Chancellor _____
Title

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

¹⁶ *Id.*