

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

IN THE MATTER OF)
)
 J. R.) Case No. OAH-09-0550-PFE
_____) ACPE Case No. 8029475090

DECISION

I. Introduction

The appellant, J. R., 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 4, 2009. Mr. R. appeared by telephone. Faith Guthert represented the ACPE by telephone.

Mr. R. does not dispute that the commission sent notice of default in compliance with the law, that the notice of default had not been rescinded, and that the amount owed was less than the amount taken from the PFD. Mr. R. presented a convincing argument that in his particular case there is a possibility that not taking his PFD for application against his debt might result in faster repayment of the obligation, but he did not prove that the commission had acted improperly under the applicable legal standards when it took his PFD for payment against his defaulted student loans.

II. Facts

The commission has claimed Mr. R.’s 2009 permanent fund dividend to be applied against his debt for defaulted Alaska Education Loans. The appeal form that the commission had sent to Mr. R. 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- The Notice of Default has been rescinded by ACPE after review under Alaska Statute 14.43.145(c) (attach copy of rescission notice); or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. R. checked the last box indicating that the commission claimed more from his PFD than the accelerated unpaid balance. In the space for additional information Mr. R.

wrote, “I need my PFD for a new car. I have a bad knee & I can not walk very well. I have proof I have been paying monthly & need my PFD.”

At the hearing, Mr. R. explained that he does not dispute that his loan are in default. He testified that in the recent past he hit a rough spot financially, but he now has a good job and is making payments. Mr. R. testified that the commission is garnishing about \$350 from his wages, and he does not object to that. Mr. R. argues, however, that for the commission to both garnish his wages and take his dividend is excessive.

Besides his recent financial difficulty, Mr. R. has suffered a knee injury that makes it difficult and painful for him to walk. Mr. R.’s vehicle is, according to Mr. R., “on its last legs” and in need of replacement. Mr. R. asserts that his financial inability to replace his vehicle, due to the loss of his PFD, jeopardizes his employment and ability to make ongoing payments on the defaulted loans.

The commission asserts that Mr. R. owed principal of \$18,197.22 as of September 8, 2009, along with interest of \$16.73. The commission asserts that it properly sent notices of default, and that it did not rescind the notices.

III. Discussion

By law, the commission is allowed to take a student loan borrower’s PFD when the loan is in default.¹ 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.”²

At a hearing, the borrower has the burden of proving one of these three elements.³

Mr. R. concedes that he cannot prove any of these three elements. Mr. R.’s objection to the taking of his PFD is based on the argument that it would be in the lender’s best interest to refrain from taking his PFD now so that he will be in a better position to continue making payments over the long term.

¹ AS 14.43.145(a)(2); AS 43.23.067.

² AS 43.23.067(c).

³ *Id.*

While Mr. R.'s argument has logical appeal and his assessment of his particular situation may be correct, they do not provide a legal basis to reverse the commission's apparent conclusion to the contrary. There are a number of collection methods available to the commission when a loan is in default and the balance due has been accelerated. The commission is entitled to make use of any method it chooses as it sees fit. While Mr. R. is free to suggest that the commission exercise restraint in its collection efforts, it is ultimately the commission's decision how to proceed in collecting the debt. It is unsurprising that Mr. R. might feel frustration in his efforts to persuade the commission, but the commission has elected to take Mr. R.'s dividend in addition to garnishments of his wages. The commission's choice of collection methods is within its legal authority.

IV. Conclusion

Mr. R. 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. R.'s permanent fund dividends.

DATED this 19th day of November, 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 23rd day of December, 2009.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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