

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

IN THE MATTER OF)
)
S. N. (aka S. J.)) Case No. OAH-09-0579-PFE
_____) ACPE Case No. 2080320153

DECISION

I. Introduction

The appellant, S. N., appeals a claim on her permanent fund dividend (PFD) by the Alaska Commission on Postsecondary Education (“the commission”). Administrative Law Judge Dale Whitney heard the appeal on January 11, 2010. Faith Guthert represented the commission by telephone. Ms. N. did not appear.

Ms. N. has not met her 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that the ACPE failed to send a notice of default in compliance with the law, that the notice of default had been rescinded, or that the amount owed was less than the amount taken from the PFD.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 Ms. N.’s 2009 permanent fund dividend for application against defaulted Alaska Education Loans. The commission asserts that, as of September 8, 2009, Ms. N. owed the commission a total of \$9,827.19 in unpaid principal, plus accrued interest of \$3,804.80.

The appeal form that the commission had sent to Ms. N. 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- The Notice of Default has been rescinded by ACPE after review under Alaska Statute 14.43.145(c) (attach copy of rescission notice); or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.”

Ms. N. checked the last box indicating that the amount the commission claimed from her PFD is greater than the amount she owes. In a space for “additional information,” Ms. N.

wrote, “within the last 10 years over 4,000.00 has been paid regarding these loans or Stafford loans plus Alaska loans over the last 20 years. IRS garnished refund toward education loan.”

The commission asserts that it properly sent notices of default, and that it did not rescind the notices. Although she checked the box indicating the commission took more from her PFD than she owed, Ms. N. did not provide any evidence to support this assertion, nor did she explain how much, if any, the commission should have taken.

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 Ms. N. has not provided any evidence at all, and there are no facially apparent errors in the commission’s action. Ms. N.’s mention of Stafford loans, which are a federal program, and her statement that the IRS has garnished her federal tax refund, suggests that Ms. N. may be confusing Alaska loans with federal loans. Ms. Guthert stated at the hearing that the commission does not garnish federal tax returns and it has not done so in this case.

IV. Conclusion

Ms. N. has not met her 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 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. N.’s permanent fund dividends.

DATED this 12th day of January, 2010.

By: Signed
DALE WHITNEY
Administrative Law Judge

¹ AS 14.43.145(a)(2); AS 43.23.067.

² AS 43.23.067(c).

³ *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 9th day of February, 2010.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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