

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

IN THE MATTER OF	)	
	)	
R. M.	)	Case No. OAH-09-0580-PFE
<hr/>	)	ACPE Case No. 5325251144

**DECISION**

**I. Introduction**

The appellant, R. M. (formerly known as R. S.), 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 9, 2010. Ms. M. appeared by telephone. Stephanie Butler represented the ACPE by telephone.

The evidence shows it to be more likely than not that the commission sent Ms. M. a notice of default as required by AS 14.43.145(c). The commission is therefore entitled to take Ms. M.’s PFD and apply it to the balance of her loans.

**II. Facts**

The commission has claimed Ms. M.’s 2009 permanent fund dividend for application against a defaulted Alaska Education Loan. The commission alleges that it sent Ms. M. a notice of default on January 23 or 25, 2008, and that it did not rescind the notice.

Ms. M. testified as follows: She took out several student loans, but stopped attending school sometime in 2005. When the time to begin making payments on the loans came due, Ms. M. was not able to make the payments and she requested deferment of payments from the commission. The commission agreed, according to Ms. M., and her loans went into deferment status. Ms. M. testified that she renewed the deferments at regular intervals, and always kept her account in good standing. This was sometimes done in writing, but Ms. M. also testified that sometimes the commission would grant her deferments verbally over the phone without any written documentation.

Ms. M. lived at the same address in Alaska until November of 2008, and she never had any trouble receiving mail from the commission or anyone else until that time. In November of 2008 Ms. M. moved out of state, and from that time on she changed her address several times and at times had some trouble with her mail for various reasons. Ms. M. testified that she never received a letter of default, and that her account was in good standing up to May of 2009, at which time her economic hardship deferment would expire. Ms. M. testified about

some trouble she had communicating with the commission and getting the correct forms properly filled out to request another deferment, but stated that by some time in August of 2009 she finally correctly filed the correct forms and had a deferment approved for the period from February 1, 2009, to July 31, 2009. Ms. M. provided a notice from the commission dated September 17, 2009, that the deferment was approved.

At the time of the hearing, there was no evidence in the record that the commission had ever sent Ms. M. a notice of default, other than an unsupported statement in an affidavit that “the Commission executed and mailed by regular mail a notice of default, and the consequences of default imposed under AS 14.43.145, to the borrower’s most recent address provided to the Commission by the borrower or obtained by the Commission.” The affidavit did not indicate when the notice was sent or to what address it was sent. All of the evidence provided by the commission addressed actions taken in 2009 that were not relevant to the issue of whether the commission had sent the notice of default.

After the hearing ended the record was held open to provide the commission an opportunity to provide any evidence that a notice of default had been sent. The commission then provided three documents. The first item is a computer generated generic copy of a notice of default letter. This letter, titled “DHA,” reads in part as follows:

**--THIS IS YOUR INITIAL NOTICE OF DEFAULT--**

**YOU ARE IN INITIAL DEFAULT ON YOUR STATE OF ALASKA EDUCATION LOAN AND THE COMMISSION IS AUTHORIZED BY LAW TO BEGIN TO COLLECT FROM YOU INVOLUNTARILY.** Under Alaska Statute 43.23.067, this agency may seize your future Alaska Permanent Fund Dividends (PFDs). Under AS 14.43.148, you may be ineligible to renew an occupational or professional license. The commission may also use its legal power to garnish your wages and bank accounts under AS 14.43.147. The commission may use a defaulted borrower’s SSN to access state databases for purposes of determining if a borrower has wages or other assets that may be garnished.

If you have not previously been sent notification of initial default, you have 90 days to prevent your default from becoming permanent.

**IF THIS IS THE FIRST TIME YOU HAVE BEEN NOTIFIED OF INITIAL DEFAULT,** you may appeal this decision by presenting written proof to the commission, received at the address above within 30 days of this notice, documenting that at the time of this notice, no loan payment was more than or had ever been 181 days past due, and that you are compliant with a payment agreement approved by the commission.

The next document is a printout of account activity that appears to indicate that a “DHA” letter was sent on January 23, 2008. The final document is another printout of account activity with the following entry noted on February 4, 2008: “AK, BC RC’D LTR STATING IN DEFAULT. EXPLND LNS IN DEFR. EXPLND PROCESSING ECON HARD DEFR – ENDS 1/24/09. EXLPND WILL REC DEFR APPROVAL LTR. ADD OK.” The commission provided an explanation of abbreviations used in the entry: “BC” means “borrower called”; “RC’D” means “received”; “LNS” means “loans”; “DEFR” means “deferment” and “ADD OK” means that the caller verified that the address on file was correct.

### **III. Discussion**

When a loan payment becomes more than 180 days past due, the loan is in default.<sup>1</sup> After the commission sends a Notice of Default, the status of the loan undergoes important changes. After default, the entire loan becomes due immediately, instead of just the current payments being due.<sup>2</sup> The interest rate goes up, and the commission gains the right to use a number of different enforcement actions. The commission can withhold permanent fund dividends, garnish wages, take property due to the borrower, put liens on the borrower’s property, prevent the renewal of driver’s licenses, professional licenses, fishing licenses, business licenses and other kinds of licenses.<sup>3</sup>

When a loan goes into default, the commission is required to send a notice of the default to the borrower at the borrower’s most recent address.<sup>4</sup> The borrower then has 30 days to appeal the default by filing a statement with the executive director requesting that the loan status be reviewed.<sup>5</sup> The borrower must then show either that no payment is more than 180 days past due, that certain other default requirements have not been met, or that the borrower entered into and was in compliance with a default forbearance agreement with the commission. The director then has 40 days to notify the borrower of a decision whether to rescind the default notice. If the director decides not to rescind the default notice, the borrower may appeal at that time to the Superior Court.<sup>6</sup>

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<sup>1</sup> AS 14.43.145. This statute sets the default period at 180 days, but states that for loans made under AS 14.43.170, which are Alaska Supplemental Education Loans, when requirements established by the commission for default have been met. The commission had adopted by regulation (20 AAC 15.165) a definition of “default” contained in federal regulations at 34 CFR 682.200 that sets the period of default at 270 days past due for loans due in monthly installments.

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

<sup>3</sup> AS 14.43.145-150.

<sup>4</sup> AS 14.43.145(b).

<sup>5</sup> AS 14.43.145(c).

<sup>6</sup> *Id.*

When the commission takes the PFD of a borrower who is in default, the commission 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 as required;
2. the notice of default was rescinded in the process described above; or
3. “the amount owed by the borrower is less than the amount claimed from the permanent fund dividend.”<sup>7</sup>

At a hearing, the borrower has the burden of proving one of these three elements.<sup>8</sup> Ms. M. asserts that the commission never sent her a notice of default.

Based on the information provided, it is difficult to tell what happened with Ms. M.’s account in 2007. The printout showing the DHA letter on January 23, 2008, appears to indicate that Ms. M. has three loans, and that payments on at least two of the loans were made on December 11, 2007. It appears from the entry on February 4, 2008, that a representative explained to Ms. M. that her loans were in deferment until January 24, 2008, that the commission was processing another deferment request, and that Ms. M. would be receiving a letter approving the deferment.

There is no way to tell from the record what degree of delinquency Ms. M.’s loans were in before the periods of deferment, and it is somewhat puzzling that on October 6, 2009, the commission sent a letter to Ms. M.’s cosigner stating that the notice of default “should have been sent to you when the account became 180 days past due on August 26, 2009.”<sup>9</sup> Since Ms. M. submitted a letter showing that payments were deferred from February 1, 2009 through July 31, 2009, it is difficult to see how a payment could become 180 days past due one month after the deferment period ended, unless there was already a delinquency of about five months; it is also difficult to see why a notice of default would properly be sent in August of 2009 if the loans had already entered default status in January of 2008.

While the lack of clarity is unfortunate, the issue in this case is only whether or not the commission sent Ms. M. a notice of default. Even if examination of all past account activity showed that none of Ms. M.’s payments were ever more than 180 days past due, this would not mean the commission was not entitled to take her PFD; it would merely mean that, had she appealed the improper notice of default sent on January 23, 2008, Ms. M. might have

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<sup>7</sup> AS 43.23.067(c).

<sup>8</sup> *Id.*

<sup>9</sup> Exhibit 2.

prevailed. The deadline for appealing the notice of default has now passed. This garnishment appeal is not the proper forum to address a late appeal of the underlying notice of default.

The business records provided by the commission show it is more likely than not that a notice of default was mailed to Ms. M. on January 23, 2008. The records show the letter was sent, and further, that Ms. M. called on February 4, 2008, acknowledging that she had received the notice. Ms. M. did not appeal the notice of default by filing a written statement with the executive director requesting review of the notice of default, and therefore the notice of default was not rescinded.

#### **IV. Conclusion**

A preponderance of the evidence shows that the commission mailed Ms. M. a notice of default on January 23, 2008, and that the notice was not rescinded. The commission is entitled to maintain a claim on Ms. M.'s permanent fund dividend.

DATED this 12<sup>th</sup> day of February, 2010.

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 18<sup>th</sup> day of March, 2010.

By: Signed  
Signature  
Diane Barrans  
Name  
Executive Director  
Title

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