

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

In the Matter of)	
)	
K. F.)	OAH No. 10-0478-PFE
_____)	Agency No. 5924279549

CORRECTED DECISION¹

I. Introduction

The Alaska Commission on Postsecondary Education claimed K. F.'s 2010 permanent fund dividend (PFD). Ms. F. appealed by submitting a Notice of Defense and requesting a hearing on the claim against her 2010 PFD. The hearing was held November 2, 2010. Ms. F., her husband, and Faith Guthert, a Claims Manager for the commission, participated by phone. Because Ms. F. has not shown that it is more likely than not that amount owed on the defaulted loans that she cosigned is less than the amount claimed from her PFD, the appeal is denied.

II. Facts

The commission received Ms. F.'s Notice of Defense requesting a hearing on the matter of the commission's claim against her 2010 PFD. Ms. F. checked the box on the Notice of Defense form asserting that "The amount ACPE claimed from the Alaska PFD is greater than the accelerated balance owed on the loan(s)." ²

The commission's computer records show that as of September 8, 2010, the full accelerated unpaid balance on the two student loans that Ms. F. cosigned and endorsed for her son was \$9,361.94. ³ The 2010 PFD is \$1,281.

While Ms. F. had questions about how the commission accounted for some of the payments made on the loans she had cosigned, she did not present evidence that showed that it was more likely than not that that amount owed on these defaulted loans is less than the amount claimed from her 2010 PFD. ⁴

¹ A proposed decision was issued In the Matter of K. F. and distributed to the parties. After the period for proposals for action had past the proposed decision transmitted to the adopting authority. In a letter dated December 16, 2010, which was before the proposed decision was adopted, the commission filed a request to correct three typographical errors. Therefore, this corrected decision is issued in place of the original proposed decision. This corrected decision is issued under the authority of 2 AAC 64.350(b).

² Ms. F.'s September 24, 2010 Notice of Defense.

³ October 14, 2010 Affidavit of Faith Gurthert at ¶ 5. The loan applications are found at the commission's exhibits A & B. Records documenting payment history and other activity on the two loans are attached to the commissions' letter to Ms. F. dated October 22, 2010.

⁴ Recording of Hearing- Testimony of Mr. and Ms. F.

III. Discussion

The commission has legal authority to take a student loan borrower's, including a cosigning borrower's, PFD when the loan is in default.⁵ Once the commission has provided proper notification of its claim against an individual's PFD, that individual has the burden of refuting the commission's claim and may only defeat the claim by showing: (1) the commission 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 borrower is less than the amount claimed from the PFD.⁶ In her Notice of Defense Ms. F. only claimed that amount owed on the defaulted loans that she cosigned and endorsed is less than the amount claimed from her PFD.⁷ This is a factual determination to be decided based on the evidence, and on whether Ms. F. met her burden of proof.⁸

Ms. F. and her husband, Mr. F., raised questions about the commission's accounting for some payments made on these loans by their son, P.K. P. F. Ms. Guthert explained that although the records showed payments from P.K. P. F., no corresponding reduction in the amounts owed was reflected for some of those payments because P.K. P. F. had made the payments by check, but there were not sufficient funds in the checking account for the bank to make payment on the checks.

Ms. F. also explained that her son now had a job and she hopes that they will be able to work together to pay of his student loans. Mr. and Ms. F. were concerned about the lack of significant reduction despite the payments that were successfully made and the appearance that the commission was making more aggressive collection efforts against her than their son, who was the primary borrower.⁹

Ms. Guthert explained that she could not discuss collections or other matters related to student loans to their son that Ms. F. had not cosigned. However, Ms. Guthert explained that when the primary borrower makes a payment, the payment is divided evenly between all the loans on which he has outstanding balances, but when a cosigner makes a payment or has a payment garnished, the payment is credited exclusively to the loans that she cosigned. Ms.

⁵ AS 14.43.145(a); AS 43.23.067.

⁶ AS 43.23.067(c).

⁷ Ms. F.'s September 24, 2010 Notice of Defense.

⁸ AS 43.23.067(c) provides that "the borrower has the burden to show" one of three reasons why the commission cannot claim the PFD. "Unless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing..., and the standard of proof is preponderance of the evidence. To prove a fact by a preponderance of evidence, a party with the burden of proof must show that the fact more likely than not is true." 2 AAC 64.290(e).

Guthert also explained that all payments are applied first to any accrued interest and then to the principal, so it is possible to make payments without any reduction of the principal owed.

Ms. F.'s testimony did not show that the amount of the 2010 PFD exceeds her outstanding debt. Ms. F.'s does not dispute that the commission sent a proper notice of default, and that the notice has not been rescinded. Therefore, the commission properly claimed Ms. F.'s 2010 PFD.

IV. Conclusion

Ms. F. has not met her burden of proving that the amount of the 2010 PFD exceeds her outstanding debt. Therefore, the commission is entitled to maintain the claim on K. F.'s 2010 PFD.

DATED this 17th day of December, 2010.

By: Signed
Mark T. Handley
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 22nd day of December, 2010.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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

⁹ Recording of Hearing- Testimony of Mr. and Ms. F.