

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

IN THE MATTER OF)
J. L. D.) OAH No. 10-0480-PFE
)
_____) Agency No. 5639251243

CORRECTED DECISION¹

I. Introduction

The Alaska Commission on Postsecondary Education (commission) claimed J. L. D.'s 2010 permanent fund dividend (PFD). Ms. D. appealed by submitting a Notice of Defense and requesting a hearing.

A prehearing conference was held on November 1, 2010, which Ms. D. did not participate in. Ms. D. did not provide a phone number prior to the prehearing conference, as instructed on the notice sent to her. There was no answer at Ms. D.'s phone number of record when she was called at the time set for the prehearing conference. Faith Guthert, a Claims Manager for the commission, participated in the prehearing conference.

After the prehearing conference, a notice of hearing and prehearing order was issued and sent to Ms. D. This notice of hearing and prehearing order set out the time and date and the phone number at which Ms. D. would be called for the hearing. Ms. D. did not request to be called at a different number prior to the hearing.

The hearing was held November 29, 2010. At the time scheduled for the hearing, Ms. D. did not answer her phone. A message was left on her voice mail, but she did not call in before the hearing ended. Matthew Fishel, a Claims Specialist for the commission, participated by phone. The record in this case closed at the end of the hearing.

Because Ms. D. did not show that it is more likely than not that the commission failed to send or had rescinded its Notice of Default, the appeal is denied.

¹ A proposed decision was issued In the Matter of J. L. D. and distributed to the parties. The commission filed a request to correct typographical errors in the proposed decision. These errors included the misspelling of Ms. D.'s last name and the word order in the second to the last sentence in the discussion section. 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).

II. Facts

The commission's computer records show that as of September 7, 2010, the full accelerated unpaid balance on Ms. D.'s student loans that were in default was \$8,615.36 in principle, plus \$421.23 in accrued interest.² The 2010 PFD is \$1,281.

The commission received Ms. D.'s Notice of Defense requesting a hearing on the matter of the commission's claim against her 2010 PFD. Ms. D. checked the box on the Notice of Defense form indicating that that reason for her appeal was that she believed the commission had rescinded the notice of default, but she did not explain why she believed that the notice of default had been rescinded. Ms. D. also checked the box on the Notice of Defense form indicating that that reason for her appeal was that she believed the commission did not send a notice of default in compliance with the law.³

At the hearing, Mr. Fishel explained that he had reviewed the commission's records of Ms. D.'s loan, and those records did not show that Notice of Default had been rescinded, as one would expect if the commission had taken that action. Mr. Fishel also explained that the commission's records do not give any suggestion as to how Ms. D. came to believe that the commission had rescinded the notice of default.⁴ Those records also indicate that the commission properly sent the notice of default to Ms. D.⁵

Based on the evidence in the record, I find that Ms. D. did not show that it more likely than not that the commission failed to send the notice of default to Ms. D.'s address of record or that the commission rescinded the notice of default.

III. Discussion

The commission has legal authority to take a student loan borrower's PFD when the loan is in default.⁶ 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

² October 14, 2010 Affidavit of commission claims manager Faith Guthert at ¶ 5. The loan application is found at the commission's exhibit A.

³ Ms. D.'s September 21, 2010 Notice of Defense.

⁴ Recording of Hearing

⁵ October 14, 2010 Affidavit of commission claims manager Faith Guthert at ¶ 4.

⁶ AS 14.43.145(a); AS 43.23.067.

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.⁷

Ms. D. did not meet her burden of proof to show that the commission failed to send the notice of default to Ms. D.'s address of record or to show that the commission rescinded the notice of default.⁸ Ms. D. did not assert that the amount of the 2010 PFD exceeds her outstanding debt. Therefore, the commission properly claimed Ms. D.'s 2010 PFD.

IV. Conclusion

The commission is entitled to maintain the claim on J. L. D.'s 2010 PFD.

DATED this 30th day of November, 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 18th day of January, 2011.

By: Signed _____
Signature
Diane Barrans _____
Name
Executive Director _____
Title

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

⁷ AS 43.23.067(c).

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).