

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

IN THE MATTER OF)	
R. E. M.)	OAH No. 10-0526-PFE
)	
_____)	Agency No. 510211447

CORRECTED DECISION¹

I. Introduction

The Alaska Commission on Postsecondary Education (commission) claimed R. E. M.'s 2010 permanent fund dividend (PFD). Ms. M. appealed by submitting a Notice of Defense and requesting a hearing on the claim against her 2010 PFD. The hearing was held November 8, 2010.² Ms. M., her daughter G. J., and Faith Guthert, a Claims Manager for the commission, participated by phone. The commission provided a Spanish translator for Ms. M. **This hearing was in place of the hearing scheduled for 11:00 A.M. on Monday, the 22th day of November. That hearing is now cancelled.**

Because Ms. M. has not shown that it is more likely than not that the amount owed on the defaulted loans that she cosigned is less than the amount claimed from her PFD, the appeal is denied. However, because loans are now current, the commission will not garnish Ms. M.'s PFDs in the future unless Ms. J. falls behind on her payments again.

II. Facts

The commission received Ms. M.'s Notice of Defense requesting a hearing on the matter of the commission's claim against her 2010 PFD. Ms. M. did not check any of the boxes on the Notice of Defense form, but she indicated that she believed that her daughter had kept her payments current.³

The commission's computer records show that as of September 7, 2010, the full accelerated unpaid balance on the student loans that Ms. M. cosigned and endorsed for her

¹ A proposed decision was issued In the Matter of R. E. M. 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 two 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 The hearing was originally scheduled as a pre hearing conference for Ms. J. appeal, however, Ms. M. and Ms. J. asked to have their hearings at that time as well and waived their rights to the notice and the other procedural rights described in Alaska Statute 44.62.420.

³ Ms. M.'s undated Notice of Defense.

Daughter was \$7,380.52 in principle, plus \$152.87 in accrued interest.⁴ The 2010 PFD is \$1,281.

At the hearing, Ms. M. had concerns about losing her 2010 and future PFDs and wanted to know what her daughter had to do to keep current on the loans Ms. M. had cosigned, but 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.⁵

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.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 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 In her Notice of Defense Ms. M. wrote that she thought her daughter should not have been in default and only indicated that amount owed on the defaulted loans that she cosigned and endorsed might be less than the amount claimed from her PFD.⁸ This is a factual determination to be decided based on the evidence, and on whether Ms. M. met her burden of proof.⁹

Ms. M. and her daughter, Ms. J., had questions about some of the missed payments that led to the default. Ms. J. explained that she was out of work due to an injury at the same time she thought that she had taken care of her loan payments by setting up direct payments through her credit union. Ms. J. admitted that she was having problems coping with her situation during this period of time and did not open and timely respond to correspondence sent to her by the

⁴ October 29, 2010 Affidavit of Faith Gurthert at ¶ 5 & letter of correction dated November 1, 2010. The loan applications are found at the commission's exhibits A - F. Records documenting payment history and other activity on the loans are attached to the commissions' letter to Ms. M. dated October 29, 2010.

⁵ Recording of Hearing- Testimony of Ms. M. & Ms. J.

⁶ AS 14.43.145(a); AS 43.23.067.

⁷ AS 43.23.067(c).

⁸ Ms. M.'s undated Notice of Defense.

⁹ 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).

commission. Ms. J. is still attempting to track down what happened to one of the payments that her credit union was suppose to have made.

Ms. Guthert explained that the PFD garnishments had brought the payments owed on these loans current, and that as long as Ms. J. continues to make her minimum monthly payments, which have not changed, and her account does not again become 180 days past due, Ms. M.'s future PFDs will not be garnished.

Ms. J. did not object to the commission garnishing her own 2010 PFD but she was concerned about the garnishment of the PFD of her mother, Ms. M. Ms. J. explained that Ms. M. had only had to cosign her loans because of Ms. J.'s residency status at the time the loans were made. Ms. J. explained that except for the period in which she had the problems that led to the default, she has been steadily making timely payments on these loans. Ms. M. explained how much she relies on the PFD.

Ms. J.'s and Ms. M.'s testimony did not show that the 2010 PFD exceeds the amount of her outstanding debt. Ms. M. 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. M.'s 2010 PFD.

Now that Ms. J. is current on her loans, perhaps she will be able to reimburse Ms. M. for the amount that was garnished, and if Ms. J. is also able to keep current on her minimum monthly payments to the commission, Ms. M.'s future PFDs will not be in danger of garnishment.

IV. Conclusion

Ms. M. has not met her burden of proving that the 2010 PFD exceeds the amount of her outstanding debt. Therefore, the commission is entitled to maintain the claim on R. E. M.'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.]