

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

IN THE MATTER OF)	
R P. B.)	OAH No. 10-0531-PFE
)	
_____)	Agency No. 1854438643

CORRECTED DECISION¹

I. Introduction

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

A prehearing conference was held on November 15, 2010, which Ms. B. did not participate in. Ms. B. 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. B.'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. B. This notice of hearing and prehearing order set out the time and date and her phone number of record, at which Ms. B. would be called for the hearing. Ms. B. did not request to be called at a different number prior to the hearing.

The hearing was held November 30, 2010. At the time scheduled for the hearing, there was no answer her phone number of record again and no voice mail at this number. Ms. Guthert, representing the commission, participated by phone. Ms. Guthert provided a possible alternative phone number. A message was left on the voice mail at this number, but Ms. B. did not call in before the hearing ended. The record in this case closed at the end of the hearing.

Because Ms. B. did not show that it is more likely than not that the commission failed to send or had rescinded its notice of default, the appeal is denied.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 R. P. B. and distributed to the parties. A typographical error was then discovered in the proposed decision with 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. B.'s student loans that were in default was \$5,053.72 in principle, plus \$404.64 in accrued interest.² The 2010 PFD is \$1,281.

The commission received Ms. B.'s Notice of Defense requesting a hearing on the matter of the commission's claim against her 2010 PFD. Ms. B. 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. Ms. B. indicated in the note she wrote on the form that she believed that her application for a disability waiver for her loans had been accepted. Ms. B. also checked the box on the Notice of Defense form indicating that the reason for her appeal was she believed the commission did not send a notice of default in compliance with the law.³

At the hearing, Ms. Guthert explained that she had reviewed the commission's records of Ms. B.'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. Ms. Guthert also explained that the commission's records showed that one of her loans had a disability waiver provision and that Ms. B. had applied for and received a waiver for that loan, but her other loans did not include a disability waiver provision and the commission was still engaged in collection efforts on those loans. This may be how Ms. B. came to believe that the commission had rescinded the notice of default, although Ms. Guthert explained that the commission does not rescind a Notice of Default at the end of the medical cancellation process.⁴

The commission's records also indicate that the commission properly sent the notice of default to Ms. B.⁵ Ms. B. did not explain why she believed that the commission had failed to send her the notice of default.⁶

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

² November 2, 2010 Affidavit of commission claims manager Faith Guthert at ¶ 5. The loan applications are found at the commission's exhibits A-C.

³ Ms. B.'s September 22, 2010 Notice of Defense.

⁴ Recording of Hearing

⁵ November 2, 2010 Affidavit of commission claims manager Faith Guthert at ¶ 4.

⁶ Ms. B.'s September 22, 2010 Notice of Defense.

III. Discussion

The commission has legal authority to take a student loan borrower's PFD when the loan is in default.⁷ 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.⁸

Ms. B. did not meet her burden of proof to show that the commission failed to send the notice of default to Ms. B.'s address of record or to show that the commission rescinded the notice of default.⁹ Ms. B. did not assert that the amount of the 2010 PFD exceeds her outstanding debt. Therefore, the commission properly claimed Ms. B.'s 2010 PFD.

IV. Conclusion

The commission is entitled to maintain the claim on R P. B.'s 2010 PFD.

DATED this 14th day of December, 2010.

By: Signed
Mark T. Handley
Administrative Law Judge

⁷ AS 14.43.145(a); AS 43.23.067.

⁸ AS 43.23.067(c).

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).

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