

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

In the Matter of)	
)	
F R. B)	
aka F B-L)	OAH No. 11-0387-PFE
_____)	Agency No. 5339265243

DECISION

I. INTRODUCTION

The Alaska Commission on Postsecondary Education claimed Ms. B’s 2011 permanent fund dividend (PFD). Ms. B¹ appealed by submitting a Notice of Defense and requesting a hearing on the claim against her PFD. A case planning conference was scheduled for October 19, 2011. At that conference, the parties agreed that they were prepared to hold the formal hearing, and a telephonic hearing was held. Ms. B participated in the hearing, as did Faith Guthert and Mathew Fishel, who both appeared on behalf of the commission. Because Ms. B has not met her burden of proof under AS 43.23.067(c), her appeal is denied.

II. FACTS

Ms. B has 16 individual student loans.² Six of these are loans from the State of Alaska, and the rest are federal loans.³ A Notice of Default was mailed to her on May 27, 2011.⁴ In a letter dated June 3, 2011, the commission informed her that her request for forbearance of loan payments had been approved.⁵ According to this letter, she did not have to make further payments until November 30, 2011. According to the testimony of Ms. Guthert, this letter only applied to Ms. B’s federal loans. The loan number on the letter is followed by “XXXX” which, according to Ms. Guthert, refers to a federal loan.

III. DISCUSSION

The commission is allowed 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 a borrower’s PFD, the borrower has the burden of refuting the commission’s claim.⁷ The borrower may do this by showing one of only three things: (1) the commission did not send a notice of default in

¹ Ms. B was recently married and her current name is F B-L.
² Testimony of Ms. B.
³ Testimony of Ms. Guthert; Guthert Affidavit, ¶ 3.
⁴ Guthert Affidavit, ¶ 4.
⁵ Letter attached to Ms. B’s appeal.
⁶ AS 14.43.145(a); AS 43.23.067.
⁷ AS 43.23.067(c).

compliance with the law, (2) the notice of default has been rescinded, or (3) the amount owed by the individual is less than the amount claimed from the PFD.⁸ In this case, Ms. B asserted the second reason: that her notice of default had been rescinded.

It is easy to understand why Ms. B believed her default had been rescinded. She would have received the forbearance letter shortly after receiving the Notice of Default, and the forbearance letter identifies the loan it applies to with a code – XXXX – that many people will not understand. The difference between “forbearance” and “rescinded” is not something everyone is familiar with, but the two terms do not mean the same thing. To have a Notice of Default rescinded under AS 14.43.145(c), the borrower must follow the procedure set out in that subsection. To obtain a rescission, a borrower must appeal the Notice of Default and show that the default notice should not have been issued.⁹ The Notice of Default was not rescinded. Instead, a letter of forbearance was issued as to a different loan.

During the hearing, Ms. B asked whether all her loans could be consolidated so she did not continue receiving multiple letters with different and sometimes contradictory statements about her obligation to pay. While this is a logical request, it is beyond the scope of the narrow questions that can be addressed in this appeal. This proceeding is limited to whether the Notice of Default had been rescinded.

IV. CONCLUSION

The law allows the commission to claim Ms. B’s PFD to satisfy her defaulted student loan amount. Ms. B has not shown that the Notice of Default had been rescinded. Because she has not met her burden of proof, the commission is entitled to maintain a claim on Ms. B’s PFD.

DATED this 26th day of October, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

⁸ *Id.*

⁹ AS 14.43.145(c).

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 5th day of December, 2011.

By: Signed
Signature
Dianne Barrans
Name
Executive Director
Title

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