

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

In the Matter of)	
)	
D L. G)	OAH No. 11-0388-PFE
_____)	Agency No. 6220215897

DECISION

I. INTRODUCTION

The Alaska Commission on Postsecondary Education claimed Mr. G's 2011 permanent fund dividend (PFD). Mr. G appealed by submitting a Notice of Defense and requesting a hearing on the claim against his 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 at that time, and a telephonic hearing was held. Mr. G participated in the hearing, as did Faith Guthert and Mathew Fishel, who both appeared on behalf of the commission. After the hearing, the record was left open to allow Mr. G the opportunity to submit additional documents. He provided those documents the same day, and they have been marked as Exhibit A. Because Mr. G has not met his burden of proof under AS 43.23.067(c), his appeal is denied.

II. FACTS

Mr. G received a state student loan from the commission for the 1998 – 99 school year.¹ He defaulted on that loan in 2006 when he failed to make required payments under the payment schedule for his loan.² A Notice of Initial Default was mailed to Mr. G at the most recent address for him in the commission's records.³

Mr. G is a 100% disabled veteran who has been disabled since 2006 due to his service in Iraq.⁴ He also has a federal student loan, and his obligation to repay that loan was waived because of his disability.⁵

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

¹ Commission's Motion for Summary Adjudication, Exhibit 3. This loan was issued to Mr. G under a different name. He testified that he has since changed his name but acknowledged that this was his loan.

² Affidavit of Faith Guthert ¶ 4.

³ Affidavit of Faith Guthert ¶ 4.

⁴ Testimony of Mr. G.

⁵ Testimony of Mr. G.

⁶ AS 14.43.145(a); AS 43.23.067.

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(1) the commission did not send a notice of default in compliance with the law, (2) the notice of default has been rescinded, or (3) the amount owed by the individual is less than the amount claimed from the PFD.⁸ On Mr. G's appeal form, he indicated that he was contesting the commission's action based on the first reason, that a notice of default had not been sent.

Alaska Statute 14.43.145 states

The commission shall notify the borrower of the default, and the consequences of default imposed under (a) of this section, by mailing a notice to the borrower's most recent address provided to the commission by the borrower or obtained by the commission.^[9]

Mr. G testified that he did not receive this notice. After becoming disabled, he was homeless for a period of time, and the address used by the commission was a house that was vacant because his family was living in Washington state when the notice was sent. Mr. G has not shown, however, that the notice was not actually sent or that the address it was sent to was not the most recent address he had provided to the commission.

Whether Mr. G is entitled to have his loan debt waived because of his disability is not a question that can be resolved in this appeal. This appeal is limited to the narrow question of whether the notice of default was mailed to Mr. G's most recent address as of the time it was mailed. Based on her review of the commission file in this case, Ms. Guthert testified that the notice was mailed to the proper address. Mr. G has not presented any evidence to the contrary.

IV. CONCLUSION

The law allows the commission to claim Mr. G's PFD to satisfy his defaulted student loan amount. Mr. G has not shown that the commission failed to follow the correct notification procedure for making that claim. Because he has not met his burden of proof, the commission is entitled to maintain a claim on Mr. G's PFD.

DATED this 26th day of October, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

⁷ AS 43.23.067(c).

⁸ *Id.*

⁹ AS 14.43.145(b).

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.]