

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

In the Matter of)	
)	
P A. O)	OAH No. 11-0415-PFE
_____)	Agency No. 5906275941

DECISION

I. INTRODUCTION

The Alaska Commission on Postsecondary Education claimed Mr. O's 2011 permanent fund dividend (PFD). Mr. O appealed by submitting a Notice of Defense and requesting a hearing on the claim against his PFD. A case planning conference was scheduled for November 22, 2011. Mr. O was not available by telephone at the time set for that conference. A hearing notice was subsequently issued, setting a telephonic hearing for December 7, 2011.

Mr. O did participate in the hearing on December 7, as did Faith Guthert, who appeared on behalf of the commission. Because the commission was entitled to claim his PFD, and followed the proper procedure to do so, Mr. O's appeal is denied.

II. FACTS

In 2006, Mr. O received a state student loan in the amount of \$8,500.¹ He defaulted on that loan, and a notice of initial default was mailed to him on April 22, 2008.² This notice was sent to an address in No Name, Alaska.³ Mr. O was not living in No Name at the time, but he acknowledged that as of April, 2008 he probably had not provided the commission with an updated address. As of September 8, 2011, Mr. O owed \$6,499.58 in principal and interest.⁴

III. DISCUSSION

The commission is allowed to take a student loan borrower's PFD when the loan is in default.⁵ 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.⁶ 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(1) the commission did not send a notice of default in compliance with the law, (2) the notice of default has been rescinded, or (3) the amount owed by

¹ Affidavit of Faith Guthert, ¶ 3, attached to Motion Requesting Summary Adjudication.

² Affidavit of Faith Guthert, ¶ 4.

³ Testimony of Faith Guthert.

⁴ Affidavit of Faith Guthert, ¶¶ 3 and 5.

⁵ AS 14.43.145(a)(2); AS 43.23.067.

⁶ AS 43.23.067(c).

the individual is less than the amount claimed from the PFD.⁷ On Mr. O'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.^[8]

The commission's file shows that the notice to Mr. O was sent to an address in No Name.⁹ Mr. O testified that he never received this notice, and he was not living at that address then. He acknowledged, however, that at the time the letter was sent, he probably had not provided the commission with an updated mailing address.

The applicable statute in this case does not require that Mr. O actually receive the notice of default. It is sufficient that the notice be mailed to the most recent address provided to the commission. It is more likely true than not true that the notice was sent to Mr. O's most recent address on file with the commission.

IV. CONCLUSION

The law allows the commission to claim Mr. O's PFD because he has defaulted on his student loan. The evidence in this case shows that the commission followed the proper notification procedure and is entitled to maintain a claim on Mr. O's PFD.

DATED this 16th day of December, 2011.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

⁷ *Id.*
⁸ AS 14.43.145(b).
⁹ Testimony of Faith Guthert.

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 20th day of January, 2012.

By: Signed
Signature
Dianne Barrans
Name
Executive Director
Title

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