

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

In the Matter of)	
)	
W J. M)	OAH No. 11-0424-PFE
_____)	Agency No. 5516207844

DECISION

I. INTRODUCTION

The Alaska Commission on Postsecondary Education claimed W M's 2011 permanent fund dividend (PFD). Ms. M appealed that action by submitting a Notice of Defense and requesting a hearing. The hearing was held on December 19, 2011. Ms. M appeared by telephone. Faith Guthert and Matthew Fischel appeared by telephone on behalf of the commission. Based on the evidence in the record, the commission had the right to claim Ms. M's PFD, and her appeal is denied.

II. FACTS

In 2006, Ms. M received two loans from the commission in the total amount of \$17,000.¹ Ms. M defaulted on those loans on October 1, 2010, and a Notice of Initial Default was mailed to her for each loan on October 4, 2010.² As of September 8, 2011, the total amount due on these two loans was \$20,440.48.³ This amount includes the original principal debt, accrued interest that had rolled over into principal, and additional accrued interest.⁴

Ms. M has had medical issues that have made it difficult to keep current with her loan obligation.⁵ The minimum payment on her loans is \$226 per month, and she has not been able to pay that much. Ms. M has sent \$20 to \$50 every month from September 2010 through June 2011. In addition, the commission began garnishing her paycheck beginning in July of 2011. The first garnishment was for \$789. Beginning in August of 2011, the commission limited the amount of the garnishment to \$400 per month. The total amount paid by Ms. M is equal to or nearly equal to the previous underpayments that caused her loans to be in default. She is still employed, and the commission has continued to garnish \$400 per month from her paycheck.

¹ Affidavit of Faith Guthert, ¶ 3.

² Affidavit of Faith Guthert, ¶ 4.

³ Affidavit of Faith Guthert, ¶ 5.

⁴ Testimony of Faith Guthert.

⁵ The factual findings in this paragraph are based on Ms. M's testimony.

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 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 Ms. M indicated on the appeal form that she was contesting the commission's action based on the third reason, that the amount claimed is greater than the unpaid balance on the loans.

Prior to defaulting on the loan, the minimum monthly payments were \$226 per month. Because the amount being garnished from her paycheck is greater than that, Ms. M is now caught up or nearly caught up on all of the prior missed payments. Under the terms of her loan, however, once she defaulted, the entire amount she has borrowed becomes due, including any accrued interest.⁹ Even if a borrower pays the full amount of all the prior late payments, the commission is still allowed to claim a PFD. Because Ms. M defaulted, the full amount that she borrowed, plus interest, is due and owing, and not just the prior missed payments. The amount now due is more than the amount claimed from her PFD. Accordingly, it was proper for the commission to take her PFD.¹⁰

IV. CONCLUSION

The law allows the commission to claim Ms. M's PFD to satisfy the entire accelerated balance due on her loan once she has defaulted on her payments. The amount owed is greater than the amount of the PFD. Ms. M's appeal must therefore be denied.

DATED this 6th day of January, 2012.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

⁶ AS 14.43.145(a); AS 43.23.067.

⁷ AS 43.23.067(c).

⁸ AS 43.23.067(c).

⁹ AS 14.43.145(a)(1); Exhibit A to Ms. Guthert's Affidavit, page 3.

¹⁰ AS 14.43.145(a)(2).

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 13th day of February, 2012.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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