

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

IN THE MATTER OF )  
 )  
 L S. D )  
\_\_\_\_\_ )

OAH No. 14-1650-PFE  
Agency No. 2031334659

**DECISION**

**I. Introduction**

The Alaska Commission on Postsecondary Education claimed L S. D’s 2014 permanent fund dividend (PFD). Ms. D appealed by submitting a Notice of Defense and requesting a hearing on the claim against her 2014 PFD.<sup>1</sup> The hearing was held December 9, 2014. Ms. D, Faith Guthert and Matthew Fishel participated by phone. Ms. Guthert is a Financial Aid Supervisor for the ACPE and Mr. Fishel is a Claims Specialist. Because Ms. D has not shown that it is more likely than not that the ACPE staff failed to send a Notice of Initial Default to her address of record as required by AS 14.43.145(b), the appeal is denied.

**II. Facts**

The ACPE received Ms. D’s Notice of Defense requesting a hearing on the matter of its claim against her 2014 PFD.<sup>2</sup> Ms. D checked the box on the Notice of Defense form asserting that “ACPE has not sent a Notice of Default (notice that my loan(s) is 180 days past due) to my address of record at the time of default, as required by Alaska Statute 14.43.145(b)...”<sup>3</sup>

Ms. Guthert testified consistent with her affidavit. The ACPE uses a program called HELMS<sup>4</sup> to track a borrower’s payer status and generate notices. HELMS uses control records to automatically generate letters to the borrower when they are delinquent, in initial default, and in full default. Ms. Guthert testified that per the ACPE’s record of activity on Ms. D’s account, on January 16, 2007 an Initial Default Letter was automatically generated and would have been sent to Ms. D’s address of record.

Ms. Guthert has personal knowledge of how the letters were generated in 2007. She testified that the letter attached to her affidavit was the letter the ACPE was using in 2007 and recovered from the ACPE archives.

Ms. D confirmed that the address to which the letter was mailed was the correct address in 2007. She has since moved. Ms. D believes that because she did not receive the notice of

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<sup>1</sup> August 27, 2014 Notice of Defense.  
<sup>2</sup> *Id.*  
<sup>3</sup> *Id.*

default it must not have been sent. Additionally, Ms. D notes that there is no copy of the notice. During the relevant time period she did not recall difficulty receiving mail at that address. Therefore, Ms. D reasons that because she did not receive the notice of default, it must not have been sent.

As of August 21, 2014, Ms. D's full accelerated unpaid principal balance on her two student loans was \$14,591.65 and interest owing was \$120.34.<sup>5</sup> The 2014 PFD is \$1,884.

### III. Discussion

Ms. D's appeal raises the single issue of whether the ACPE sent her a notice of default in compliance with the law. This is a factual determination and will be decided based on the evidence, and on whether Ms. D met her burden of proof.<sup>6</sup>

The ACPE has legal authority to take a student loan borrower's PFD when the loan is in default.<sup>7</sup> Once the ACPE has provided proper notification of its claim against a borrower's PFD, the borrower has the burden of refuting the ACPE's claim.<sup>8</sup> The borrower may do this by showing one of only three things: (1) the ACPE 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.<sup>9</sup> Ms. D's Notice of Defense claimed the first, that the ACPE did not send her a notice of default.<sup>10</sup>

Ms. D testified that she did not receive the notice. The issue is not whether the borrower *received* the Notice of Initial Default. Rather, the issue is whether it is more likely than not that the ACPE failed to *send* the notice. Though evidence that the borrower did not receive the notice may raise a question about whether it was actually sent, such evidence does not establish that it is more likely than not that the notice was not sent.

Ms. Guthert testified that according to Ms. D's account history, HELMS generated an initial default letter on January 16, 2007, which would have been mailed to Ms. D at the address of record. The address of record was the correct mailing address for Ms. D in January 2007.

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<sup>4</sup> Higher Education Loan Management Systems (HELMS).

<sup>5</sup> October 23, 2014 Affidavit of Faith Guthert at ¶75.

<sup>6</sup> AS 43.23.067(c) (providing that "the borrower has the burden to show" one of three reasons why the ACPE 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).

<sup>7</sup> AS 14.43.145(a); AS 43.23.067.

<sup>8</sup> AS 43.23.067(c).

<sup>9</sup> *Id.*

When balanced against the evidence presented by the ACPE, Ms. D's testimony that she did not receive the notice does not prove that, more likely than not, the ACPE failed to send the required notice. Ms. D has not challenged the division's assertion that her outstanding debt exceeds the amount of the 2014 PFD. Therefore, the ACPE properly claimed Ms. D's 2014 PFD.

**IV. Conclusion**

Ms. D has not met her burden of proving that the ACPE failed to send the notice of default as required by law. Therefore, the ACPE is entitled to maintain the claim on L.S. D's 2014 PFD.

DATED this 23<sup>rd</sup> day of December, 2014.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

**Adoption**

The undersigned, on behalf of the Alaska Commission on Post Secondary Education and in accordance with AS 44.64.060, adopts this Decision 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 23<sup>rd</sup> day of January, 2015.

By: Signed  
Signature  
Diane Barrans  
Name  
Executive Director  
Title

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

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<sup>10</sup> August 27, 2014 Notice of Defense.