

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

In the Matter of:)	
)	
B.H.)	OAH No. 22-0818-PFE
_____)	Agency No. 5143227246

DECISION

I. Introduction

B.H., previously applied for and received Alaska student loans from the Alaska Commission on Postsecondary Education (ACPE). After she defaulted on the balance owing, ACPE informed her of its execution against her Permanent Fund Dividend (PFD) to satisfy the past due obligation. B.H. appealed, asserting that ACPE failed to send a notice of default as required.

The evidence in this case demonstrates that ACPE properly established the existence of the outstanding obligation and provided B.H. with the appropriate notice of default. As a result, ACPE’s garnishment of her PFD is affirmed.

II. Facts

Signed promissory notes for student loans identifying B.H. as “Borrower” and the Alaska Student Loan Program as “Lender,” were executed on August 12, 1983, August 6, 1984, August 2, 1985, September 19, 1986, and August 3, 1987, and September 18, 1987. The combined principal on these loans totaled approximately \$25,800, together with accruing interest.¹ The loan documents provide that if the Borrower defaults on the loan, ACPE may declare the entire unpaid amount due.²

According to ACPE’s records, it sent B.H. a notice of default for the loans on March 14, 1994.³ The notice stated that ACPE may, among other things, pursue garnishing B.H.’ PFD. The notice, however, failed to provide her notice of her appeal rights.⁴ The 1994 notice was followed by another notice of default on February 1, 2011. Unlike the 1994 default notice, the

¹ Affidavit Regarding Account History and Status (ACPE Affidavit), at 2; *Id.* at Appendix A.

² ACPE Affidavit, Appendices B and C.

³ ACPE Affidavit, Appendices B and C.

⁴ ACPE Affidavit at Appendix C.

2011 default notice did advise B.H. of her ability to appeal the notice.⁵ However, no such appeal occurred regarding either notice.⁶

As B.H. testified, except for several occasions when she did not have a job or had insufficient income, she has made routine payments of \$150 per month or more on her loan obligation.⁷ ACPE's records reflect the same. Nevertheless, as of November 21, 2022, the total outstanding owing on the obligation remains at \$28,550.⁸ As Ms. Carlton testified, despite B.H.'s payments, the amount owing by a Borrower can often exceed the original loan amount due to accruing interest and the fees and charges imposed by collection agencies. Also, the interest rates often increase once the debt is turned over to collections.⁹

Subsequently, on August 26, 2022, B.H. was sent a notice by ACPE of its claim to her 2021 PFD, seeking to apply it to the outstanding balance due on her student loans.¹⁰ B.H. appealed the 2022 notice, claiming that ACPE did not send an earlier notice of default.¹¹

A hearing occurred on November 10, 2022. B.H. appeared for the hearing and testified, under oath. It was also attended by ACPE representatives Heather Carlton, Carolyn Hall, and Nancy Womack. Ms. Carlton testified under oath on behalf of the ACPE.

Following the hearing ACPE was ordered to supplement the record with an accounting of the balance owed by B.H. including payments made to date and a copy of default notices mailed to B.H. since the default notice referenced in ACPE's supporting affidavit. ACPE was also requested to supply a copy of the medical deferment of repayment referenced during the hearing. It timely complied with this request by providing the information.¹²

III. Discussion

ACPE may take an education loan Borrower's PFD when the loan is in default.¹³ Once it provides proper notice of default and a claim against the Borrower's PFD, the Borrower has the

⁵ Supplemented Record (Notice); Heather Carlton Testimony. The document provided by ACPE is a template of the notice it testified was sent to B.H. on February 1, 2011. B.H. did not deny that she likely received the notice.

⁶ Heather Carlton Testimony.

⁷ B.H. Testimony.

⁸ Supplemented Record (Accounting) at 12.

⁹ Heather Carlton Testimony.

¹⁰ Notice to B.H. (August 26, 2022).

¹¹ Request for Hearing (September 21, 2022).

¹² Supplemented Record (Accounting); Supplemented Record (Notice); and Medical Cancellation Packet. Each of these documents was provided to the Office of Administrative Hearings on November 21, 2022.

¹³ AS 14.43.145(a)(2); AS 43.23.067.

burden of refuting the claim. The Borrower may do this by showing one of only three things: (1) 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.¹⁴ In her hearing request, B.H. claimed ACPE did not send a notice of default.¹⁵

However, at time of hearing, B.H. clarified that she was confused regarding the hearing request as to the timing of the alleged notice of default. She had thought that the reference to having received a notice of default was regarding a notice of default that may have been recently received, as opposed to something occurring many years ago. She conceded that she likely did receive both the 1994 and 2011 notices ACPE testified as having been sent. She also conceded that she likely owes the monies ACPE claims.¹⁶ Therefore, based on the uncontroverted evidence, B.H. did not meet her burden of showing that ACPE failed to provide notice.

Because B.H. did not meet her burden in demonstrating that ACPE failed to send her the requisite notice of default, that would normally result in a finding in ACPE's favor. However, given the age of these loans and the limited collection efforts by ACPE, it is necessary to address the issue of whether ACPE's collection efforts are barred by the passage of time. This is particularly a concern here given that the 1994 default notice did not notify B.H. of her appeal rights or place her specific notice of her ability to challenge ACPE's actions.

The statute of limitations ordinarily begins to run on the date the cause of action accrues.¹⁷ However, under the discovery rule, the cause of action accrues when the claimant has information sufficient to alert a reasonable person to the fact that she has a potential cause of action. At that point, she should begin an inquiry to protect his ... rights and she is deemed to have notice of all facts which reasonable inquiry would disclose. The limitations period begins to run when the claimant discovers or reasonably should have discovered all the elements of the cause of action.¹⁸ In this instance, there are multiple reasons why any alleged statute of limitations is unavailing in this case.

¹⁴ AS 43.23.067(c).

¹⁵ Request for Hearing (September 21, 2022).

¹⁶ B.H. Testimony.

¹⁷ *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 920; 27 Cal.Rptr.3d 661, 667 (Cal.2005).

¹⁸ *Cameron v. State*, 822 P.2d 1362, 1365 (Alaska 1991).

First, even though the 1994 notice may not have included appeal rights, at a minimum, B.H. was on inquiry notice to follow-up with ACPE at that time the notice was received to see what could be done to challenge the underlying obligation. She did not do this.

Second, any failure of the 1994 notice to contain appeal rights was cured by ACPE's second notice of default in 2011, that did include appeal rights language.¹⁹

Third, as B.H. testified, she has made frequent payments on the outstanding balance owed to ACPE, including as recently as October 2022. Per Alaska law, when a past due payment of principal and interest is made upon any evidence of indebtedness, the running of the time within which the action may be commenced starts from the date the last payment is made.²⁰

Finally, because this action is an administrative collection of an established debt, and because the time limitations established in Alaska statutes for execution on a civil judgment explicitly do not apply to ACPE's administrative execution of a recipient's PFD,²¹ ACPE is not precluded by the passage of time from taking her PFD to satisfy her past due student loan debt.

IV. Conclusion

Because ACPE provided appropriate notice of default, its garnishment of B.H.' PFD is affirmed.

DATED this 22nd day of November 2022

Signed _____

Z. Kent Sullivan
Administrative Law Judge

¹⁹ Supplemented Record (Notice).

²⁰ *Madden v. Alaska Mortg. Group*, 54 P.3d 265, 268 (Alaska 2002) (citing AS 09.10.210).

²¹ AS 23.23.160(a).

Adoption

The ALASKA COMMISSION ON POSTSECONDARY EDUCATION adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 19th day of December, 2022.

By: Signed
Signature
Sana Efir
Name
Executive Director
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]