

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

In the Matter of)
)
C D. K) OAH No. 22-0802-PFE
) Agency No. 5978231944
_____)

DECISION

I. Introduction

The Alaska Commission on Postsecondary Education (“ACPE”) executed a claim on C K’s 2022 Permanent Fund Dividend (“PFD”) after she defaulted on her student loan payments. Ms. K appealed, claiming that she owed less on the student loan debt than the amount of her 2022 PFD. As discussed below, the evidence and the applicable law demonstrate that ACPE is entitled to execute on Ms. K’s PFD.

II. Facts

Ms. K took out three student loans payable to ACPE in 1996 and 1997. The loan documents state that if the borrower defaults on the loan, ACPE may declare the entire unpaid amount due and may garnish the borrower’s PFD.¹ Ms. K fell behind in her payments, and as of April 18, 2008, she was more than 180 days in arrears for all three loans. On that date, ACPE mailed her a notice of default at her current address, notifying her that her loans were in default and that her PFD was subject to being seized to pay off the loan.² Subsequently, Ms. K had multiple PFDs seized and her wages garnished. This resulted in her first student loan (L1) being paid off in 2019.³

In August 2022, the balance due and owing on the two remaining loans (L2 and L3) was \$6,289.88, including principal and accrued interest. ACPE sent Ms. K a letter on August 26, 2022, advising her of the balance due and that it intended to seize her PFD and apply it against her debt.⁴ The ACPE receiving a hearing request from Ms. K on September 15, 2022. In that request, she checked the box indicating that her ground for an appeal was that “[t]he amount being claimed from my PFD is greater than the total unpaid balance of my Alaska education loan debt.”⁵ The payment ledgers for all three of Ms. K’s Alaska student loans were filed prior to the hearing. They showed that L1 had been paid off in 2019 and that the last payments that were

¹ Affidavit Regarding Account History and Status (“ACPE Aff.”), Appendix A.
² ACPE Aff., Appendices B - D.
³ Ms. Carlton’s testimony; L1 ledger.
⁴ ACPE Aff., Appendix F.
⁵ See Hearing Request date stamped September 15, 2022.

received on L2 and L3 were in June of 2021. This left the balance due and owing on L2 and L3 as \$6,289.88 as of August 22, 2022.⁶ Following the execution on Ms. K's 2022 PFD, the balance due and owing on L2 and L3 was \$3,043.49.⁷

Ms. K's testimony did not dispute that she still had a balance due and owing on her student loans. Instead, she testified that the collection process was unfair, that the ACPE would not accept her payment plan proposals, and that the collection actions over the years had left her impoverished and homeless.⁸

III. Discussion

ACPE may take a student loan borrower's PFD when the loan is in default.⁹ Once ACPE provides proper notice of default, in a subsequent claim against the borrower's PFD, the borrower has the burden of refuting the claim.¹⁰ 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.¹¹ On her hearing request, Ms. K alleged that she owed less on her loans than the amount claimed from her PFD.

The evidence presented at hearing, being Ms. K's testimony, Ms. Carlton's testimony, and the loan payment ledgers demonstrated that there was a balance due and outstanding on the student loans that exceeded the amount of the 2022 PFD, given that there is still a balance due on the loans after it was taken and applied to the loans. Consequently, Ms. K did not satisfy her burden of proof on this case. Ms. K's testimony regarding the unfairness and inflexibility of the collection process, and the hardship that it has caused her, did not establish any factor that can legally be taken into account.

IV. Conclusion

The ACPE's execution of Ms. K's PFD is affirmed.

Dated: November 28, 2022

Signed

Lawrence A. Pederson
Administrative Law Judge

⁶ Ms. Carlton's testimony; ACPE Aff; L1, L2, and L3 ledgers.

⁷ Ms. Carlton's testimony; L2 and L3 ledgers.

⁸ Ms. K's testimony.

⁹ AS 14.43.145(a)(2); AS 43.23.160.

¹⁰ AS 43.23.160(c).

¹¹ AS 43.23.160(c).

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 27th day of December, 2022.

By: *Signed* _____
Sana Efird
Executive Director

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