

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

In the Matter of:	)	
	)	
N U M. T	)	OAH No. 22-0806-PFE
_____	)	Agency No. 5386266248

**DECISION**

**I. Introduction**

The Alaska Commission on Postsecondary Education (“ACPE”) executed a claim on N T’s 2022 Permanent Fund Dividend (“PFD”) after she defaulted on her student loan payments. Ms. T appealed for two separate reasons. First, she claimed that she was not sent the required Notices of Default on her loans. Second, she requested that the ACPE not execute on her PFD due to financial hardship. As discussed below, the evidence and the applicable law demonstrate that the ACPE is entitled to execute on Ms. T’s PFD.

**II. Facts**

Ms. T took out a total of four student loans payable to the ACPE in 2005 and 2006.<sup>1</sup> The loan documents state that if the borrower defaults on the loan, the ACPE may declare the entire unpaid amount due and may garnish the borrower’s PFD.<sup>2</sup> Ms. T fell behind in her payments, and as of September 1, 2014, she was more than 270 days in arrears for all four loans. On September 3, 2014, the ACPE mailed her notices of default, one for each loan, at her then current address, notifying her that her loans were in default and that her PFD was subject to being seized to pay off the loan.<sup>3</sup>

In August 2022, the balance due and owing on Ms. T’s loans was \$47,531.42. The ACPE sent Ms. T 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.<sup>4</sup> The ACPE received a hearing request from Ms. T on September 21, 2022. In that request, she checked the box indicating that her ground for an appeal was that “ACPE did not send a Notice of Default, or notice that my account was more than 180 days past due, as required by AS 14.43.145(b).” She also checked the “other box” which stated that the ACPE had not been in contact with her and that she had a “court balance due,”

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<sup>1</sup> Affidavit Regarding Account History and Status (“ACPE Aff.”); ACPE Aff., Appendix B; Ms. Carlton’s testimony.

<sup>2</sup> ACPE Aff., Appendix B; Ms. Carlton’s testimony.

<sup>3</sup> ACPE Aff., Appendices C – F; Ms. Carlton’s testimony.

<sup>4</sup> ACPE Aff., Appendix A; Ms. Carlton’s testimony.

requesting that “the State of Alaska (not ACPE)” garnish her PFD first.”<sup>5</sup> Ms. T also provided a handwritten statement stating that she was experiencing personal hardship and that her PFD should go to pay off a different obligation to the State of Alaska.<sup>6</sup>

Ms. T’s testimony did not dispute that she still had a balance due and owing on her student loans. She verified that the Division’s 2014 Notice of Default letters contained the correct address but testified that she did not receive them. She also testified that she was experiencing financial hardship and had other outstanding financial obligations to the State of Alaska that she would like to have satisfied from her PFD before her obligation to the ACPE.<sup>7</sup>

### **III. Discussion**

The ACPE may take a student loan borrower’s PFD when the loan is in default.<sup>8</sup> Once the ACPE provides proper notice of default, in a subsequent claim against the borrower’s PFD, the borrower has the burden of refuting the claim.<sup>9</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>10</sup> Financial hardship or requesting that the State of Alaska apply her PFD to other outstanding debts or claims are not among the reasons allowed by law to contest the PFD execution.

The ACPE demonstrated that it mailed Ms. T the required notices of default. It provided copies of the actual letters mailed, which were introduced into evidence without objection. Ms. T testified that those letters had the correct mailing address on them. This creates a presumption that Ms. T received those letters.<sup>11</sup> Ms. T’s testimony, however, was that she did not receive them. However, given the passage of time since the letters were mailed on September 3, 2014, and the fact that Ms. T’s testimony appeared a bit uncertain, Ms. T did not meet her burden of proof to establish that she was not sent the notices. This was the only defense that Ms. T had in this case. Her testimony regarding financial hardship and the existence of other financial

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<sup>5</sup> See Hearing Request date stamped September 21, 2022.

<sup>6</sup> ACPE Aff., Appendix A.

<sup>7</sup> Ms. T’s testimony.

<sup>8</sup> AS 14.43.145(a)(2); AS 43.23.160.

<sup>9</sup> AS 43.23.160(c).

<sup>10</sup> AS 43.23.160(c).

<sup>11</sup> Service by mail is complete upon mailing. *Jefferson v. Spenard Builder’s Supply, Inc.*, 366 P.2d 714, 717 (Alaska 1961).

obligations to the State of Alaska did not establish any factor that can legally be taken into account.

**IV. Conclusion**

The ACPE’s execution of Ms. T’s PFD is affirmed.

Dated: December 5, 2022

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

**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 3rd day of January, 2023.

By: Signed  
Signature  
Sana Efird  
Name  
Executive Director  
Title

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