

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

In the Matter of:)
)
N.D.) OAH No. 22-0804-PFE
) Agency No. 5726253143
_____)

DECISION

I. Introduction

The Alaska Commission on Postsecondary Education (“ACPE” or “the Commission”) claimed N.D.’s 2022 Permanent Fund Dividend (“PFD”). N.D. appealed by submitting a Request for Hearing. The law provides a very limited set of defenses that can be considered in a PFD execution or garnishment hearing, and the borrower has the burden to establish one of those defenses.¹ The evidence shows that N.D. failed to establish any of those defenses, and therefore he has no legal grounds to contest ACPE’s claim on his PFD. Accordingly, the garnishment of his PFD is affirmed.

II. Facts²

In October 2003, N.D. executed a master promissory note under which he would eventually receive the student loans at issue in this matter: three Alaska Supplemental Education Loans. Although N.D.’s overall loan disbursement and repayment history was not made entirely clear on the record, ACPE established at the hearing that his Alaska Supplemental Education Loans became more than 180 days past due on or about September 12, 2012.³ On that date, ACPE mailed a “notice of default and establishment of collection order” to N.D. at an address in Arizona.⁴ At the hearing, N.D. agreed that this was the correct address for him in September 2012, although he did not recall receiving the notice.

On August 26, 2022, ACPE sent N.D. a written notice informing him that it was garnishing his 2022 PFD.⁵ At that time, the total amount owed to ACPE on the loans was \$8,986.38.⁶ On September 19, 2022, N.D. appealed the garnishment by filling out and returning

¹ AS 43.23.067(c).
² Unless otherwise specified, these facts are derived from N.D.’s testimony, the affidavit and testimony of Heather Carlton, ACPE’s Financial Aid Operations Analyst, and documents attached as appendices to the affidavit.
³ Carlton affidavit, p. 2.
⁴ ACPE Appendices D, E.
⁵ August 26, 2022 letter (submitted by ACPE with referral to Office of Administrative Hearings (OAH)).
⁶ *Id.*

a request for hearing form attached to the garnishment notice. On the request for hearing form, N.D. checked a box indicating that the basis for his appeal was that ACPE had not sent him a notice of default in compliance with the law.⁷

A telephonic hearing was held on October 31, 2022. N.D. represented himself and testified on his own behalf. ACPE Financial Aid Operations Analyst Heather Carlton presented ACPE's case and testified on its behalf.

N.D. testified at the hearing that although he never received the September 2012 notice of default, he became aware of the defaulted status of his loans in 2016 when he moved back to Alaska and ACPE began garnishing his wages to collect on the loans. He explained that he was attending college between 2013 and 2019, and then in 2020 he had reached out to ACPE to try to work out a regular schedule of repayment, but ACPE told him they would have to continue garnishing his wages.

In response to questions about how N.D. could cure the delinquent status of his loans, Ms. Carlton stated that this can be done by bringing the loan current, but in N.D.'s case the amount to pay his loans current is essentially equivalent to the full payoff amount on the loans. However, ACPE also has an option potentially available for borrowers who are the sole support for their household and are experiencing financial hardship to request a reduction in the amounts being garnished. Ms. Carlton agreed to send N.D. the documents necessary to apply for such a reduction.

III. Discussion

The Commission has legal authority to execute on a student loan borrower's PFD when the loan is in default.⁸ Once the Commission has provided proper notification of its claim against an individual's PFD, that individual has the burden of refuting the Commission's claim, which they may only do by showing one of 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 borrower is less than the amount claimed from the PFD.⁹

In this case, N.D. indicated on his request for hearing form that the basis for his appeal was that ACPE did not send him the notice of default in compliance with the law. However, N.D. only asserted that he did not receive the notice of default, and he agreed at the hearing that

⁷ N.D. request for hearing (submitted by ACPE with referral to OAH).

⁸ AS 14.43.145(a); AS 43.23.067.

⁹ AS 43.23.067(c).

the address in Arizona that it was sent to was correct. It is important to note that the relevant statute does not require that the borrower actually receive the default notice; it only requires that the notice be sent “to the borrower’s most recent address provided to the commission by the borrower or obtained by the commission.”¹⁰ Therefore, even though N.D. did not recall receiving the notice of default, the evidence presented by ACPE established that the notice was sent in compliance with this requirement.

N.D. essentially argued that due to his financial circumstances it would be unfair and would pose an extreme hardship on him to allow garnishment of his PFD to go forward, and that he had tried to contact ACPE to re-establish a payment plan to repay the loan. In response, Ms. Carlton agreed to provide the materials necessary for N.D. to apply for a hardship-based reduction to the amounts being garnished.¹¹ In addition, it is noted that as a general matter, ACPE staff are willing to engage with borrowers to discuss the status of their loans and their ability to possibly bring the loans out of delinquent status.

Unfortunately, however, the issues raised by N.D. are not defenses to PFD garnishment that can be considered as part of this decision. As previously mentioned, the bases upon which one can challenge a PFD garnishment by ACPE are quite limited. In this case, the notice of default was sent to N.D. in compliance with AS 14.43.145(b); the notice has not been rescinded; and his existing total loan balance exceeds the amount of the 2022 PFD. Therefore, he has not demonstrated that he qualifies for an exemption from garnishment based on one of the reasons allowed by statute. As a result, the Commission’s garnishment of N.D.’s 2022 PFD is in compliance with legal requirements.

IV. Conclusion

The Commission’s garnishment of N.D.’s 2022 Permanent Fund Dividend is affirmed.

DATED this 12th day of December, 2022.

By: Signed _____
Andrew M. Lebo
Administrative Law Judge

¹⁰ AS 14.43.145(b).

¹¹ The record is unclear as to whether Ms. Carlton was referring to the amounts being garnished from N.D.’s wages or from his PFD.

Adoption

I, on behalf of the Alaska Commission on Postsecondary Education and in accordance with AS 44.64.060, adopt 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 9th day of January, 2023.

By: Signed
Signature
Sana Efird
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.]