

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

In the Matter of: )  
 )  
B.I. ) OAH No. 22-0766-PFE  
 ) Agency No. 5645223241  
\_\_\_\_\_ )

DECISION

**I. Introduction**

The Alaska Commission on Postsecondary Education (“ACPE” or “the Commission”) claimed B.I.’s 2022 Permanent Fund Dividend (“PFD”). B.I. 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.<sup>1</sup> The evidence shows that B.I. 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. Facts<sup>2</sup>**

In November 2016 B.I. executed a promissory note under which he would eventually receive the student loan at issue in this matter, an Alaska Supplemental Education Loan. Although his overall loan disbursement and repayment history was not made entirely clear on the record, ACPE established at the hearing that B.I.’s Alaska Supplemental Education Loan became more than 180 days past due on or about March 7, 2022. On that date, ACPE mailed a “notice of default and establishment of collection order” to B.I. at his address of record in Alaska.<sup>3</sup>

Subsequently, on August 26, 2022, ACPE sent B.I. a written notice informing him that it was garnishing his 2022 PFD.<sup>4</sup> At that time, the total amount owed to ACPE on the loan was \$6,0153.47.<sup>5</sup> On September 6, 2022, B.I. appealed the garnishment by filling out and returning a request for hearing form attached to the garnishment notice. On the request for hearing form,

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<sup>1</sup> AS 43.23.067(c).  
<sup>2</sup> Unless otherwise specified, these facts are derived from B.I.’s testimony, the affidavit and testimony of Heather Carlton, ACPE’s Financial Aid Operations Analyst, and documents attached as appendices to the affidavit.  
<sup>3</sup> Carlton affidavit; ACPE Appendix D.  
<sup>4</sup> August 26, 2022 ACPE letter to B.I. (submitted by ACPE with referral to OAH).  
<sup>5</sup> *Id.*

B.I. 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.<sup>6</sup>

A telephonic hearing was held on October 20, 2022. B.I. represented himself and testified on his own behalf. ACPE Financial Aid Operations Analyst Manager Heather Carlton presented ACPE's case and testified on its behalf.

B.I. testified at the hearing that he understood that his loan had become delinquent, and he did recall receiving the notice of default from ACPE. He explained that he had been unemployed for four to five months, had been forced to use his financial resources for basic survival needs and to prevent the loss of his home, and he was willing to try to work out a repayment plan with ACPE to get the loan out of delinquency status.

### **III. Discussion**

The Commission has legal authority to execute on a student loan borrower's PFD when the loan is in default.<sup>7</sup> 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 was sent but has been rescinded; or (3) the amount owed by the borrower is less than the amount claimed from their PFD.<sup>8</sup>

In this case, B.I. indicated on his request for hearing that the basis for his appeal was that ACPE did not send him a notice of default in compliance with the law. However, B.I. conceded at the hearing that he did recall receiving the notice of default. The evidence presented by ACPE established that the notice of default was sent in compliance with statutory requirements.<sup>9</sup>

B.I. 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 stated that after the hearing, ACPE staff would engage with B.I. to discuss the status of his loan and his ability to get it out of delinquent status. Unfortunately, however, the issues raised by B.I. are not defenses to PFD garnishment that can be considered as part of this decision. As previously

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<sup>6</sup> Harris request for hearing, submitted by ACPE on October 20, 2022.

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

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

<sup>9</sup> It is notable 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." AS 14.43.145(b).

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 B.I. in compliance with AS 14.43.145(b); the notice has not been rescinded; and his existing 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 those reasons. As a result, the Commission's garnishment of B.I.'s 2022 PFD is in compliance with legal requirements.<sup>10</sup>

#### **IV. Conclusion**

The Commission's garnishment of B.I.'s 2022 Permanent Fund Dividend is affirmed.

DATED this 9<sup>th</sup> day of December, 2022.

By: Signed \_\_\_\_\_  
Andrew M. Lebo  
Administrative Law Judge

### **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 5<sup>th</sup> day of January, 2022.

By: Signed \_\_\_\_\_  
Signature  
Sana Efirid \_\_\_\_\_  
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.]

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<sup>10</sup> Notwithstanding this result, B.I. is encouraged to work with ACPE staff to establish a repayment plan, in order to possibly avoid garnishment of future PFDs.