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

In the Matter of	)	
	)	
N U M. T	)	OAH No. 23-0628-PFE
	)	

DECISION

I. Introduction

The Alaska Commission on Postsecondary Education ("ACPE") notified N.T that it was going to garnish her 2023 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 garnish her PFD due to financial hardship.[1] As discussed below, the evidence and the applicable law demonstrate that the ACPE is entitled to garnish Ms. T's PFD.

II. Facts[2]

Ms. T took out a total of four student loans payable to the ACPE in 2005 and 2006. 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. 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.

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. 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," requesting that "the State of Alaska (not ACPE)" garnish her PFD first." Ms. T

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1 Ms. T also checked the box on the hearing request form stating that the ACPE had rescinded the notice of default. At hearing, she clarified that was not an issue and that she had checked that box by mistake.

2 Unless otherwise specified, the facts recited herein are derived from the decision entered in an identical case involving Ms. T which was issued on January 3, 2023. *See* Affidavit Regarding Account History and Status ("ACPE Aff."), Appendix A.

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.

Ms. T requested a hearing to challenge ACPE's garnishment of her 2022 PFD. After that hearing, a decision was issued finding that ACPE had sent her a Notice of Default and that it was therefore allowed to garnish her 2022 PFD.[3]

On August 23, 2023, ACPE notified Ms. T that it was garnishing her 2023 PFD to be applied to the outstanding balance on her delinquent student loans.[4] Ms. T requested a hearing to challenge the garnishment of her 2023 PFD.[5]

Ms. T provided exhibits for this hearing which consist of copies of pages from the Dept. of Revenue's PFD webpage showing that the ACPE had garnished her 2021 and 2022 PFDs in addition to seeking to garnish her 2023 PFD. She also provided a copy of court paperwork showing that she had court ordered restitution in a criminal matter.[6]

Ms. T's testimony did not dispute that she still had a balance due and owing on her student loans. She also testified that she was experiencing financial hardship and had other outstanding financial obligations to the State of Alaska, specifically her criminal restitution requirement, and that it should be satisfied from her PFD before her obligation to the ACPE.[7]

III. Discussion

The ACPE may take a student loan borrower's PFD when the loan is in default.[8] 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.[9] 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.[10] Financial hardship or requesting that the State of Alaska apply the PFD to the recipient's other outstanding debts or claims are not among the reasons allowed by law to contest the PFD execution.

In a 2022 prior case involving the exact same issues and the exact same facts, this Tribunal held that ACPE had sent Ms. T the required notices of default, and that the ACPE was

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3 ACPE Aff., Appendix A.
4 *See* ACPE letter dated August 23, 2023 filed on October 9, 2023 as part of the hearing referral.
5 *See* Request for Hearing dated September 24, 2023 filed on October 9, 2023 as part of the hearing referral.
6 *See* Documents submitted by Ms. T on October 29, 2023.
7 Ms. T's testimony.
8 AS 14.43.145(a)(2); AS 43.23.160.
9 AS 43.23.160(c).
10 AS 43.23.160(c).

entitled to garnish Ms. T's 2022 PFD. Nothing has changed since the entry of the 2022 decision. Under the legal doctrine of collateral estoppel, because this case involves the exact same parties, the ACPE and Ms. T, and the exact same issues, the result in the 2022 case controls this case.[11] This means that the ACPE is entitled to garnish Ms. T's 2023 PFD.

IV. Conclusion

The ACPE's garnishment of Ms. T's 2023 PFD is affirmed.

Dated: November 27, 2023

Signed
Lawrence A. Pederson
Administrative Law Judge

[11] See, e.g., Miller v. State, Dept. of Public Safety, Div. of Motor Vehicles, 761 P.2d 117, 118 (Alaska,1988) (holding that elements of collateral estoppel are "(1) the issue decided in a prior adjudication was precisely the same as that presented in the action in question; (2) the prior litigation must have resulted in a final judgment on the merits; and (3) there must be "mutuality" of parties, i.e., collateral estoppel may be invoked only by those who were parties or privies to the action in which the judgment was rendered.").

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, 2023.

By: *Signed*
Sana Efird
Executive Director

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