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

In the Matter of	)	
	)	
D. R. X.	)	OAH No. 21-2163-PFE
	)	

DECISION

I. Introduction

The Alaska Commission on Postsecondary Education ("ACPE" or "the Commission") claimed D. X.' 2021 Permanent Fund Dividend ("PFD") as part of its collection efforts on two student loans she had borrowed from ACPE and allowed to go into default status. Ms. X. 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 on the defaulted loans has the burden to establish one of those defenses.[1] The evidence shows that notwithstanding Ms. X.'s confusion regarding how her payments on the loans had been applied in the past, she failed to establish any of the available defenses to PFD garnishment, and therefore she has no legal grounds to contest ACPE's claim on her PFD. Accordingly, the garnishment of her PFD is affirmed.

II. Facts[2]

In August 2000 Ms. X. executed a promissory note for a student loan – an "Alaska Education Loan" – in the amount of $8,000.[3] In August 2005, Ms. X. executed a second promissory note in connection with another student loan – an "Alaska Supplemental Education Loan" – in the amount of $8,500.[4] Although Ms. X.' overall loan disbursement history was not made entirely clear on the record, it was not disputed that the full amount of the first loan, and half of the second loan, were disbursed to her shortly after she executed the promissory notes.[5] The promissory notes for these loans set the interest rate for the first loan at a fixed rate of 8% per year, and for the second loan at a variable rate starting at 2.8% and adjusted annually.[6]

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1 AS 43.23.160(c).

2 Unless otherwise specified, these facts are derived from testimony of Ms. X., the affidavit and testimony of J. E., ACPE's Financial Aid Operations Analyst, and documents attached as appendices to the affidavit.

3 ACPE Appendix B1.

4 ACPE Appendix B2.

5 Thus Ms.X. borrowed a total of $12,500.

6 E. testimony.

The complete details of Ms. X.' repayment history on the two loans were not entered into the record. ACPE established at the hearing, however, that Ms. X.' Alaska Education Loan became more than 180 days past due and went into default on or about May 22, 2009, and the Alaska Supplemental Education Loan became more than 270 days past due and went into default on or about September 15, 2009.[7] On May 26, 2009, ACPE mailed a letter providing notice of default on her Alaska Education Loan to Ms. X. at her address in Anchorage, Alaska.[8] On September 15, 2009, ACPE mailed a letter providing notice of default regarding her Alaska Supplemental Education Loan to Ms. X. at her address in Anchorage, Alaska.[9]

On August 31, 2021, ACPE sent Ms. X. a written notice informing her that it was garnishing her 2021 PFD and indicating that at that time, the total amount owed on the two loans was $19,954.31.[10] On September 13, 2021, Ms. X. appealed the garnishment by filling out and returning a request for hearing form attached to the garnishment notice.[11] On the request for hearing form, Ms. X. checked a box indicating that the basis for her appeal was that "ACPE did not send a notice of Default … as required by AS 14.43.145(b)."[12]

A telephonic hearing was held on November 4, 2021. Ms. X. represented herself and testified on her own behalf. ACPE Financial Aid Operations Analyst Heather Carlton presented ACPE's case and testified on its behalf.

Ms. X. did not dispute at the hearing that she had allowed the two Alaska loans to go into default, but she explained that this had occurred because she had been required to care for family members and therefore had been unable to work. She testified that she believed ACPE had not complied with AS 14.43.145(b) because she had never received a "current notice of default." In response, Ms. Carlton explained that for purposes of collecting on the defaulted loans, ACPE complied with the law with the notices of default sent to Ms. X. in 2009.

Ms. X. also argued at the hearing that she believed she had fully paid off the loans, because she had been able to go to work on the Employer A in 2015 and 2016, and at that time

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7 ACPE Appendix C; E. testimony.

8 E. affidavit; ACPE Appendix D.

9 E. affidavit; ACPE Appendix D. ACPE presented copies of templates of the two default letters for the record of this appeal. (ACPE Appendices E and F.) These templates both show dates of October 21, 2021; this is because the templates have a date field that automatically fills in the current date when the form is printed out, and ACPE printed them on October 21, 2021 for purposes of this hearing.

10 ACPE letter to Ms. X. dated August 31, 2021 (filed with referral package to the Office of Administrative Hearings (OAH) and admitted into the record, but not marked with an appendix or exhibit number).

11 Request for Hearing form, dated September 13, 2021 and received by ACPE September 20, 2021 (filed with referral package to OAH and admitted into the record, but not marked with an appendix or exhibit number).

12 *Id.*

significant sums (between $1,700 and $1,800) were garnished from her paychecks every month to pay down the loans. Then in 2016 she had been entitled to about a $7,000 tax refund from the IRS, and about half of the refund was garnished for student loan repayment. She explained that because only a portion of the refund was garnished, she assumed this meant that her loans had been fully paid off. In response to this assertion, Ms. Carlton explained that neither ACPE nor the collection agencies acting on its behalf have the authority to garnish federal tax refunds. She pointed out that Ms. X. had also previously received federal student loans that had been initially serviced by ACPE but had been returned to the federal government for collection due to non-payment. Thus, it was likely that Ms. X.' tax refund had been garnished by the federal government to collect on those loans.

Ms. Carlton testified that as of the date of the hearing on November 4, 2021, the total balance due on Ms. X.' two ACPE loans was $20,056.05. This figure took into account the amount of her 2021 PFD at issue in this appeal ($1,114), already received by ACPE.

At the close of the hearing, Ms. X. asked that ACPE send her a full history of the payments she had made and the monies otherwise collected from her on the two loans in question. Ms. Carlton agreed to provide such records, and "declining balance sheets" and a "payment history" printout were provided by ACPE on or about November 19, 2021.

Ms. X. also requested additional time to submit records from her Employer A, and tax return documents, to show the significant sums of money that she had paid on her two ACPE loans. It was agreed that the record would be kept open until November 30, 2021 to accommodate her request. However, Ms. X. submitted no additional documents to OAH by that date, nor have any been received as of the date of this decision.

III. Discussion

The Commission has legal authority to execute on a student loan borrower's PFD when the loan is in default.[13] 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. [14]

[13] AS 14.43.145(a); AS 43.23.160.
[14] AS 43.23.160(c).

In this case, Ms. X. indicated on her request for hearing form that the basis for her appeal was that ACPE did not send her a notice of default in compliance with the law. As mentioned above, however, at the hearing it was established that ACPE did in fact send Ms. X. notices of default for the two loans in 2009, in compliance with statutory requirements. As such, Ms. X. did not meet her burden of proof on the issue of ACPE's provision of default notices to her under AS 43.23.160.

Ms. X. also argued at the hearing that the third allowable ground for appeal listed above – that the amount owed by the borrower is less than the amount claimed from her PFD – should be applied in this case. She contended that she had paid so much money towards these two loans that they should have been fully paid off already. Ms. X.' contentions, however, appeared primarily to be based on her mistaken view of the garnishment of her IRS refund in 2016. She apparently did not realize that the effort to garnish her tax refund had to have been undertaken by the federal government to collect on federal student loans, and those loans are entirely separate from the two ACPE loans at issue in this case. Ms. X.' contention that she had already paid off the ACPE loans also appeared to fail to take into account (1) the significant amounts of interest that had accrued on the loan balances, given that the two loans date back over 21 years and 16 years respectively, and (2) the significant fees charged by ACPE's collection agency on monies collected through wage garnishments and other non-PFD related collection efforts.

Most significantly, after the hearing ACPE provided to Ms. X. the payment history records for each of the loans that she had requested. Ms. X. was given extra time to submit any documents she felt would support her argument that the loans had been paid off, or at minimum that the balance due was less than the $1,114 amount of her 2021 PFD (as required by AS 43.23.160(c)). Ms. X. failed to submit any records after the hearing.

Based on all of the factors discussed above, Ms. X. did not meet her burden of establishing that that the amount she owes on the loans is less than the amount claimed from her PFD.

Ms. X. also suggested that garnishment of her PFD should be overturned because it will pose a hardship to her, as she is still responsible for caring for family members, she lives on a very tight budget, and they are having trouble making ends meet. Unfortunately, these types of issues are not valid defenses to a 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, and Ms. X. has not established that those bases are applicable in this case: As a result, the Commission's garnishment of her 2021 PFD is in compliance with legal requirements.

IV. Conclusion

The Commission's garnishment of Ms. X.' 2021 Permanent Fund Dividend is affirmed.

DATED this 5th day of April, 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 2nd day of May, 2022.

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.]