STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBBIE W. REYNOLDS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 93-3731
	)	
DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF STATE EMPLOYEES' INSURANCE,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to written notice a formal hearing was held in this case before Larry J. Sartin, a duly designated Hearing Officer of the Division of Administrative Hearings, on October 13, 1993, in Gainesville, Florida.

APPEARANCES

For Petitioner: Robbie W. Reynolds, pro se

For Respondent: Augustus D. Aikens, Jr., Esquire
Department of Management Services
Division of State Employees' Insurance
2002 Old St. Augustine Road, B-12
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STATEMENT OF THE ISSUES

Whether the Petitioner, Robbie Reynolds, is eligible for family medical insurance coverage for medical expenses incurred by the Petitioner's son?

PRELIMINARY STATEMENT

By letter dated April 8, 1993, the Payroll & Benefits Supervisor for the Gainesville Regional Office of the Department of Corrections requested, on behalf of the Petitioner, that she be granted "family" medical insurance coverage effective December 1, 1992. By letter dated May 11, 1993, Alecia Runyon, Director of the Division of State Employees' Insurance, Department of Management Services, denied the request and informed the Petitioner of her right to request a formal administrative hearing.

The Petitioner filed a Petition for Formal Hearing contesting the Respondent's decision. On July 1, 1993, the Respondent filed an Order Accepting Petition and Assignment to the Division of Administrative Hearings requesting assignment of this matter to a Hearing Officer of the Division of Administrative Hearings.

The petition was designated case number 93-3731 and was assigned to undersigned. The final hearing was scheduled for October 13, 1993, by an Amended Notice of Hearing.

At the final hearing the Petitioner testified on her own behalf and presented the testimony of Jordaina Chambers, Gail Page, Linda Cruce and Daphne Teel. Three exhibits were offered by the Petitioner and were accepted into evidence.

The Respondent presented the testimony of Salina Gilmore. Two exhibits were offered by the Respondent and were accepted into evidence.

No transcript of the final hearing was ordered. The Respondent filed a proposed recommended order. The proposed recommended order contains proposed findings of fact. A ruling on each proposed finding of fact has been made either directly or indirectly in this Recommended Order, or the proposed finding of fact has been accepted or rejected in the Appendix, which is attached hereto. The Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

A. The Parties.

1. At all times relevant to this proceeding, the Petitioner, Robbie W. Reynolds, was an employee of Department of Corrections, an agency of the State of Florida.

2. The Respondent, the Department of Management Services, Division of State Employees' Insurance (hereinafter referred to as the "Division"), is an agency of the State of Florida. The Division is responsible for managing the State's employee health insurance system.

B. Participation in the State of Florida Health Insurance Plan.

3. The State of Florida makes health insurance available to its employees (hereinafter referred to as the "State Health Plan"). Employees may choose health insurance through the State of Florida Employees' Group Health Self Insurance Plan or through various health maintenance organizations (hereinafter referred to as "HMOs").

4. The Division has promulgated Chapter 60P, Florida Administrative Code, regulating the State Health Plan.

5. Employees pay part of the premiums for their health insurance and the State contributes a part of the cost of premiums. The amount of premiums paid by an employee and the State depends on the type of coverage selected.

6. Employees may elect coverage only for themselves ("individual" coverage), or coverage for themselves and certain qualified dependents ("family" coverage).

7. Female employees who elect individual coverage are eligible for the payment of maternity or pregnancy benefits. Included in these benefits are certain benefits for the newborn child referred to as "well-baby care."

8. In order for medical expenses attributable solely to a newborn baby that is ill at or after birth to be covered by the State Health Plan, an employee must elect family coverage for the employee and the child. The family coverage must be effective as of the date the medical expenses are incurred for the child.

C. Open Enrollment Periods.

9. Once an employee selects the type of health insurance he or she desires, that employee generally may change the election only during certain designated periods of time, referred to as "open enrollment periods." During an open enrollment period, an employee may change from HMO coverage to the State of Florida Employees' Group Health Self Insurance Plan, or vice versa, may change from individual coverage to family coverage, or vice versa, and may add or delete dependents to the employee's family coverage.

10. Changes to an employees' State Health Plan coverage made during an open enrollment period are effective for the calendar year immediately following the open enrollment period.

D. Other Changes in Health Insurance Coverage.

11. An exception to the requirement of the State Health Plan that changes in coverage only be made during an open enrollment period is provided for certain specified events, referred to as "qualifying events."

12. The acquisition of an "eligible dependent" during a year may constitute a qualifying event. For example, if an employee marries, the employee may elect family coverage for himself or herself and the employee's spouse.

13. A change from individual coverage to family coverage may also be made if an employee or an employee's spouse gives birth to a child.

14. The change to family coverage as a result of marriage or the birth of a child must be made within thirty-one days after the eligible dependent is acquired.

15. An employee may also elect family coverage as a result of the employee or the employee's spouse becoming pregnant. If the employee or employee's spouse elects family coverage in time for the family coverage to be effective at the time of the child's birth, the child may then be added as a dependent to the family coverage by notifying the Division of the child's birth within thirty-one days after the child is born.

16. In order to change to family coverage when an employee or employee's spouse becomes pregnant, the employee, must apply for the change to family coverage in time for the employee to make a month's premium payment on the first day of at least the month during which the child is born or an earlier month. For example, if an employee elects to change from individual coverage to family coverage for a yet to be born child in July effective for September, the first full month's premium is paid on September 1, and the child is born on September 2, the employee has family coverage for all of September and the child will be covered if the Division is notified of the child's birth within thirty-one days after the date of birth.

17. In order for an employee to make a change in coverage as the result of a qualifying event, the employee must file a Change of Information form with the employee's personnel office. The personnel office forwards the form to the Division.

E. Ms. Reynolds' Health Insurance.

18. Ms. Reynolds, as an employee of the State of Florida, was eligible for state health insurance. She elected to participate in the HMO that was available in the Gainesville area where she is employed.

19. AvMed is the name of the HMO for the Gainesville area and Ms. Reynolds' insurer.

20. Although married, Ms. Reynolds initially elected individual coverage. Ms. Reynolds did not elect family coverage for her husband because he received health insurance benefits from his employer.

21. During 1992, Ms. Reynolds became pregnant.

22. The baby's projected due date was April 15, 1993.

F. The Open Enrollment Period for 1993.

23. The open enrollment period for the next calendar year (1993) after Ms. Reynolds became pregnant took place in October of 1992.

24. During the October 1992 open enrollment period the Department of Corrections, through its personnel office, conducted meetings with employees to discuss health care benefits and coverage available to its employees. Two benefits consultants, trained by the Division, conducted the meetings, providing information to, and answering questions from, employees concerning the open enrollment period.

25. Ms. Reynolds, who was approximately three months pregnant at the time of the benefit consultation meetings, attended one of the sessions. Ms. Reynolds attended the session for the purpose of determining what steps she should take to insure that her yet-to-be-born infant was covered by health insurance.

26. Ms. Reynolds spoke for some time with Gail Page and Jordaina Chambers, benefits consultants of the Department of Corrections.

27. Ms. Reynolds informed the benefits consultants that she was pregnant and that she wanted to insure that her yet-to-be-born infant was covered by her health insurance. Ms. Reynolds was incorrectly told that she could not elect family coverage for just her and her yet-to-be-born infant. This incorrect advice, however, did not have any effect on the effective date Ms. Reynolds ultimately decided to begin her family coverage.

28. Ms. Reynolds also informed the benefits consultants that the baby was due April 15, 1993.

29. The benefits consultants informed Ms. Reynolds that her pregnancy constituted a qualifying event and that she could, therefore, switch to family coverage in order to cover her baby. She was also informed that she would have to notify the Division of her child's birth with thirty-one days after birth to add the child to the policy.

30. After being told that she would have to switch her coverage from individual coverage to family coverage, adding her husband as a dependent, Ms. Reynolds asked the benefits consultants when she should switch to family coverage. Consistent with the policies of the Division, and the training the benefits consultants had received from the Division, the benefits consultants advised Ms. Reynolds that she should elect family coverage effective two or three months prior to her due date. The Division makes this recommendation so that employees can save the increased premiums for family coverage a reasonable period of time before the child is born.

31. In light of the fact that Ms. Reynolds' conversation with the benefits consultants took place during the 1992 open enrollment period and the fact that January 1, 1993 was three and one-half months prior to Ms. Reynolds' due date, Ms. Reynolds was advised by the benefits consultants that it would be reasonable to switch from individual coverage to family coverage through the open enrollment period. Based upon this advice, Ms. Reynolds' family coverage would be effective January 1, 1993.

32. The benefits consultants did not advise Ms. Reynolds of any possible consequences of not electing to switch from individual coverage to family coverage with an effective date prior to January 1, 1993.

33. The benefits consultants also did not tell Ms. Reynolds that she could not choose to switch from her individual coverage to family coverage with an effective date prior to January 1, 1993.

34. On or about October 15, 1992, Ms. Reynolds executed and filed with the Division an Annual Benefit Election Form. Respondent's exhibit 1. Pursuant to this form Ms. Reynolds elected to change her health insurance coverage from individual to family effective January 1, 1993. Ms. Reynolds elected to add her husband as a covered dependent.

35. Based upon the election made by Ms. Reynolds, her family coverage became effective on January 1, 1993. If her child was born before that date, any expenses attributable solely to medical services received by the child would not covered by Ms. Reynolds' medical coverage. If the child was born on or after that date and Ms. Reynolds notified the Division of the child's birth within thirty-one days after the child's birth, any expenses attributable solely to medical services received by the child would be covered by Ms. Reynolds' medical coverage.

36. The evidence failed to prove that the advice given by the benefits consultants in October 1992 was not reasonable based upon the information available to them and to Ms. Reynolds. The evidence also failed to prove that either the benefits consultants or Ms. Reynolds unreasonably failed to realize that the child would be born more than three and one-half months premature.

37. Ms. Reynolds, while reasonably relying on the advice of the benefits consultants, knew or should have known that the ultimate decision as to when to begin family coverage was hers to make. Ms. Reynolds also should have been somewhat wary of the advice she was given, in light of the fact that Ms.

Reynolds admitted that she was told by the benefits consultants that they "did not know that much about what she was asking." Despite this warning, Ms. Reynolds testified during the final hearing that she followed their advice because she felt there was "no reason to believe they would be wrong."

G. The Premature Birth of the Reynolds' Child.

38. On December 29, 1992, Ms. Reynolds underwent surgery, due to unforeseen medical complications, to deliver her child. The child died on January 1, 1993.

39. In order to add the child as a dependent to her medical insurance when the child was born, Ms. Reynolds had to have family coverage in effect as of December 1, 1992 or earlier. Unfortunately for Ms. Reynolds, on December 29, 1992 when her child was born, Ms. Reynolds only had individual coverage. The rules governing medical benefits of state employees do not allow employees with individual coverage to add dependents. Therefore, even though Ms. Reynolds attempted to get the Division, through the personnel office of the Department of Corrections, to add her child by notifying the personnel office of the birth of the child immediately after December 29, 1993, the child could not be added to her individual coverage.

40. The child received medical services and incurred medical expenses between December 29, 1992 and January 1, 1993. Those expenses were not covered by the well-baby care provided by Ms. Reynolds' individual coverage. Because Ms. Reynolds did not have family coverage at the time the child was born and the child could not be added to her individual coverage, the medical expenses incurred for the child were not covered by Ms. Reynolds' health insurance.

41. Although the child should be added as a dependent to Ms. Reynolds family coverage which took effect as of January 1, 1993, the evidence failed to prove that any medical expenses incurred for the care of the child on January 1, 1993, were not attributable to a preexisting condition. Therefore, expenses incurred for the care of the child on January 1, 1993, are not eligible for reimbursement.

H. Should the Division be Estopped from Denying Coverage?

42. The Division relies on benefits consultants to assist the Division in administering the State Health Plan. Benefits consultants are trained by the Division, they are state employees and they hold themselves out as representing the State in general and the Division in particular.

43. The Division's rules provide for the active involvement of the various personnel offices in administering the State Health Plan. See, Rule 60P-2.003(1), Florida Administrative Code.

44. The Annual Benefit Election Forms issued by the Division during the open enrollment specifically provide that the forms are to be turned in to employees' personnel offices.

45. The Division allows personnel offices of the various state agencies to hold themselves out to employees as agents of the Division.

46. In this case, Ms. Reynolds was given advice by benefits consultants, on behalf of the Division and consistent with Division policy, which played a role in Ms. Reynolds making a decision which resulted in medical expenses incurred upon the premature birth of her child not being covered by her medical insurance.

47. While Ms. Reynolds was given some incorrect advice, she was not given incorrect advice concerning the effective date of her family coverage. The advice given to Ms. Reynolds concerning when to start her family coverage was reasonable at the time given and, as she admitted during the hearing, there was no reason in October of 1992 to doubt the wisdom of the advice she received. Ultimately, it was Ms. Reynolds decision. While she may not have understood that advice, she made the decision to make choices and act on the advice even after being warned that the benefits consultants were not knowledgeable about what she was asking.

CONCLUSIONS OF LAW

A. Jurisdiction.

48. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes (1992 Supp.).

B. Burden of Proof.

49. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceeding. Antel v. Department of Professional Regulation, 522 So.2d 1056 (Fla. 5th DCA 1988); Department of Transportation v. J.W.C. Co., Inc. 396 So.2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So.2d 249 (Fla. 1st DCA 1977).

50. In this proceeding it is Ms. Reynolds that is asserting the affirmative. Therefore, Ms. Reynolds had the burden of proving that medical expenses incurred for the care of her child were covered by the State Health Plan or, if not, should still be paid by for by her health care insurance provider.

C. The Child's Eligibility for Coverage.

51. Pursuant to the pertinent rules of the Division, medical expenses incurred by Ms. Reynolds' child were not covered by the State Health Plan insurance coverage selected by Ms. Reynolds. Ms. Reynolds had elected individual coverage health insurance benefits until January 1, 1993. Therefore, on the date of the child's birth, December 29, 1992, the child could not be added as a dependent to Ms. Reynolds' medical insurance and the child was not individually eligible for health insurance benefits other than those provided as part of the well-baby coverage afforded to new born infants.

52. In order for medical expenses attributable to the child to be covered by the State Health Plan, Ms. Reynolds was required to elect, and be covered by, family coverage no later than December 1, 1992, and the child was required to be added within thirty-one days after its birth as a covered dependent.

53. Rule 60P-2.003, Florida Administrative Code, which governs changes from individual coverage to family coverage provides, in pertinent part, the following:

> (2) An employee . . . having individual coverage may apply for a change to family coverage within thirty-one (31) calendar days after the date of acquisition of any eligible dependent or during in the open enrollment period. . . .
> (3) An employee . . . may begin family coverage prior to acquiring any eligible dependents. Since such coverage is effective the first day of any given month, employees who will acquire eligible dependents during the month and are desirous of having immediate coverage of such dependents must make application in time for a complete month's premium to be deducted prior to the first day of the month during which the dependent will be acquired. Otherwise, coverage cannot be effective on the actual date the dependent is acquired. [Emphasis added].

54. Pursuant to the foregoing rule, an employee may elect to change his or her health insurance from individual coverage to family coverage and add a new born child with coverage effective on the date the child is born if the requirements of the rule are followed. The requirements of Rule 60P-2.003, Florida Administrative Code, include a requirement that the employee "make application in time for a complete month's premium to be deducted prior to the first day of the month during which the dependent will be acquired." Pursuant to this requirement, Ms. Reynolds was required to apply for family coverage sufficiently early for her to have paid a month's premium prior December 1, 1992. To do this, Ms. Reynolds would have to have elected to begin her family coverage on December 1, 1992, and not January 1, 1993. This she did not do. Ms. Reynolds elected for her family coverage to begin on January 1, 1993, the first day of the month following the month her child was born.

55. Rule 60P-2.003, Florida Administrative Code, goes on to provide that, if application is not made so that a full month's premium is deducted for the first day of the month during which the dependent will be acquired, "coverage cannot be effective on the actual date the dependent is acquired." Pursuant to this provision, family coverage could not be effective for Ms. Reynolds' child on the date the child was born because she elected for her family coverage to begin on January 1, 1993, the first day of the month following the month her child was born.

D. Equitable Estoppel.

56. At the conclusion of the final hearing of this matter, it was suggested that the parties address the question of equitable estoppel. See Tri-State Systems v. Department of Transportation, 500 So. 2d 212 (Fla. 1st DCA 1986), rev. denied, 506 So. 2d 1041 (1987). See also Warren v. Department of Administration, 554 So. 2d 568 (Fla. 5th DCA 1989), review denied, 562 So. 2d 345 (Fla. 1990). This suggestion was made because of concern that Ms. Reynolds

may have been so misled by the benefits consultants to warrant granting her medical coverage for her child even though she did not comply with the requirements of Rule 60P-2.003, Florida Administrative Code.

57. The Division has addressed the elements of equitable estoppel in its proposed recommended order. The Division has argued that estoppel is not appropriate in this case because the benefits consultants were not acting as the Division's agents when they advised Ms. Reynolds and because the "advice to appellant constituted at best incomplete statements of Chapter 60P Florida Administrative Code provisions rather than misrepresentations of fact . . . ."

58. The suggestion that the benefits consultants did not act as agents of the Division is rejected. The benefits consultants are State employees. They received training from the Division concerning the availability of health care benefits for State employees. Personnel offices of the various agencies are involved in various decisions concerning various State programs, including health care benefits. The Annual Benefit Election Form is to be "returned to your agency personnel office . . . ." Personnel offices are, therefore, expected to assist the Division in administering the State Health Plan and are allowed by the Division to hold themselves out as speaking on behalf of the Division. Employees reasonably rely upon advice received from personnel offices concerning the State Health Plan as advice from the Division. If this is not in fact the case, the Division should clearly inform employees that the various personnel offices have NO authority over the State Health Plan.

59. The second issue is more troublesome. Ms. Reynolds was given some incorrect advice. She also did not understand after talking to the benefits consultants, or even after the final hearing of this matter, why the expenses attributable to her child were not covered. Ultimately, however, it was Ms. Reynolds who decided to change her coverage from individual to family coverage effective January 1, 1993. As a consequence, the medical expenses incurred for her child were not covered.

60. The advice relied upon by Ms. Reynolds which she relied upon to decide to switch her coverage effective January 1, 1993, was reasonable at the time. It was no more reasonable to expect the benefits consultants to anticipate the possibility that Ms. Reynolds' child would be born prior to January 1, 1993, than it was to expect Ms. Reynolds to anticipate such a possibility. Therefore, the failure of the benefits consultants to advise Ms. Reynolds of such remote consequences is not enough to require retroactive coverage of the child's medical expenses.

61. Based upon the foregoing, the evidence failed to prove that the Division should be estopped from denying medical coverage of Ms. Reynolds' child.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Management Services, Division of State Employees' Insurance enter a Final Order dismissing Robbie W. Reynolds' petition in this matter.

DONE AND ENTERED this 19th day of November, 1993, in Tallahassee, Florida.

LARRY J. SARTIN
Hearing Officer
Division of Administrative Hearings
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(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of November, 1993.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 93-3731

The Division has submitted proposed findings of fact. It has been noted below which proposed findings of fact have been generally accepted and the paragraph number(s) in the Recommended Order where they have been accepted, if any. Those proposed findings of fact which have been rejected and the reason for their rejection have also been noted. Ms. Reynolds did not file a proposed recommended order.

The Division's Proposed Findings of Fact

1 Accepted in 2-3 and 19.
2 Accepted in 4-5, 9 and hereby accepted.
3 Hereby accepted.
4 Accepted in 6 and 9.
5 Accepted in 11-17.
6 Accepted in 7-8.
7 Accepted in 1 and 18-19.
8 Accepted in 23-26.
9 Accepted in 20, 28 and 30-32. But See 27-20.
10 See 29-30. But see 27.
11 Accepted in 34 and 38.
12 See 40.
13 Hereby accepted.
14 Accepted in 40-41

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.