

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUSIE SIMONE BROWN,)	
)	
Petitioner,)	
)	
)	
vs.)	CASE NO. 95-2790
)	
DEPARTMENT OF MANAGEMENT SERVICES)	
DIVISION OF STATE EMPLOYEES')	
INSURANCE,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Following notice to all parties, Don W. Davis, a Hearing Officer for the Division of Administrative Hearings, held a final hearing in the above-styled case on July 14, 1995, in Orange Park, Florida.

APPEARANCES

For Petitioner: Susie Simone Brown, Pro Se
2931 Bay Road
Orange Park, Florida 32065

For Respondent: Augustus D. Aikens, Jr.
Department of Management Services
Division of State Employees' Insurance
2002 Old St. Augustine Rd., B-12
Tallahassee, Florida 32301-4876

STATEMENT OF THE ISSUE

The issue is whether Petitioner's request for an upgrade in her insurance coverage from individual to family status should be granted with a retro-active effective date of October 13, 1994; the date of birth of Respondent's son.

PRELIMINARY STATEMENT

By letter dated April 27, 1995, Respondent's representative informed Petitioner that her request that her health insurance coverage be back dated to cover the premature birth of her son had been denied.

Petitioner sought review of Respondent's denial and, on May 31, 1995, the matter was referred to the Division of Administrative Hearings for further proceedings.

At the final hearing, Respondent and Petitioner entered into a stipulation of certain factual matters. Additionally, Petitioner presented the testimony of

one witness, herself, and one composite exhibit. Respondent presented testimony of two witnesses, and one composite exhibit.

No transcript of the final hearing was provided by the parties. Respondent filed a proposed recommended order containing proposed findings of fact. Those proposed findings are addressed in the appendix to this recommended order.

FINDINGS OF FACT

Stipulated Facts

1. Petitioner was initially employed and covered under the State Employees' State Group Health Self Insurance Plan on July 1, 1993.
2. Petitioner selected individual coverage and completed the appropriate forms indicating such coverage.
3. Effective January 1, 1994, Petitioner's coverage for the 1994 Plan Year continued with individual coverage.
4. Petitioner became pregnant in April, 1994, with an estimated due date of December 6, 1994. However, she went into premature labor on October 12, 1994, at 32 weeks gestation. Attempts to stop her labor were unsuccessful and she delivered a son, Gavon K. Brown, by caesarean delivery on October 13, 1994.
5. On October 22, 1994, Petitioner completed the required forms to change from individual coverage to family coverage.
6. Respondent changed Petitioner's coverage to family coverage effective December 1, 1994.

Other Facts

7. Petitioner did not inform the personnel office at her place of state employment, Columbia Correctional Facility in Lake City, Florida of her pregnancy.
8. Petitioner saw a private physician in Gainesville, Florida. The physician was concerned about Petitioner's excessive weight and referred her to the Park Avenue Women's Center in Gainesville sometime near the end of April, 1994.
9. The Park Avenue Women's Center, associated with the University of Florida College of Medicine, treats women with at risk pregnancies. Petitioner was seen there by Dr. Kenneth Kelner, also a professor of the Department of Obstetrics and Gynecology of the University of Florida College of Medicine.
10. As a registered nurse, Petitioner was aware that she was at an increased general risk for difficulty with her pregnancy as a result of her excessive weight.
11. On August 5, 1994, as a result of problems with getting a medical bill paid by the State Employees' State Group Health Self Insurance Plan, Petitioner called offices of the administrator of the Plan, Blue Cross and Blue Shield (BCBS) in Jacksonville, Florida. In the course of her telephone conversation, Petitioner maintains that she was told she could switch to family coverage in

order to cover expenses of her unborn child as late as 30 days prior to the birth, estimated and expected to occur on December 6, 1994.

12. Petitioner had previously received The Benefit Payment Schedule on July 13, 1994, which contained a warning to pregnant women policyholders that single or individual coverage did not include coverage for a child following its birth and that family coverage would need to be in effect prior to the month of the child's birth to afford coverage for the child.

13. During the August 5, 1994 telephone conversation with the representative of BCBS in Jacksonville, Petitioner inquired regarding the amount of the monthly premium for family coverage. Petitioner was referred to the Division of State Employees' Insurance (DSEI) and provided with that telephone number in order to acquire coverage for her unborn child and get further detailed information. Petitioner did not call DSEI.

14. On October 12, 1994, in the course of a routine check-up, it was determined that Petitioner's cervix was dilated. Subsequently, Petitioner gave birth to her son at 1 a.m. on October 13, 1994.

15. On October 13, 1994, Petitioner called the personnel office at her place of employment with the Department of Corrections and informed that office of the birth of her son. Although Petitioner maintains that she was told at that time by someone in the personnel office that her son would immediately be afforded insurance coverage, Petitioner presented no direct admissible evidence in corroboration of this allegation and her testimony in this respect is not credited.

16. On October 22, 1994, while sitting in the hospital lobby waiting to visit her son, who remained in hospital care following his premature birth, Petitioner signed the required papers and forms to change from individual to family coverage. The forms, bearing an effective date for coverage change of December 1, 1994, were returned to Petitioner's personnel office without an accompanying check or other payment for any employee premium co-payment which would have permitted a construction that an earlier coverage effective date should have been assigned the policy change.

17. Based upon the timing of the election made by Petitioner, expenses attributable solely to medical services received by the child prior to December 1, 1994, were not covered by the State Employees' State Group Health Self Insurance Plan.

CONCLUSIONS OF LAW

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

19. 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).

20. In this proceeding, Petitioner is asserting the affirmative. She has 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 for by her health care insurance provider.

21. Pursuant to the pertinent rules of Respondent, medical expenses incurred by Petitioner's child were not covered by the State Health Plan insurance coverage selected by Petitioner. She had elected individual coverage health insurance benefits. Therefore, on the date of the child's birth, October 13, 1994, the child could not be added as a dependent to Petitioner's medical insurance.

22. For medical expenses attributable to the child to be covered by the State Health Plan, Petitioner was required to elect, and be covered by, family coverage no later than October 1, 1994, and the child was required to be added within thirty-one days after its birth as a covered dependent.

23. Rules 60P-2.003(2) and (3), Florida Administrative Code, which govern changes from individual coverage to family coverage provide, 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].

24. 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, i.e., 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." To meet this requirement, Petitioner should have applied for family coverage sufficiently early to have paid a month's premium prior October 1, 1994. This she did not do. Instead, Petitioner elected for her family coverage to begin on December 1, 1994.

25. Petitioner has contended that she was misled by the BCBS representative and/or the personnel office representative who had assured her of coverage for her child. Petitioner's contention requires an examination of 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). Such consideration is necessary in order to address whether Petitioner may have been so misled by either the BCBS representative or personnel office representative 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.

26. Petitioner's argument that she was misled is not persuasive. Petitioner's testimony of assurances of coverage by personnel office representatives is not credited. Further, she did not follow the BCBS representative's advice to call DSEI. As a nurse and as the subject of treatment at a center for at risk pregnancies, Petitioner made a contrary choice to wait, on the presumption that she would enjoy a normal pregnancy with the possibility of later electing coverage which would begin December 1, 1994.

27. Based upon the foregoing, the evidence fails to prove that Respondent should be estopped from denying medical coverage of Petitioner's 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 Susie Simone Brown's petition in this matter.

DONE and ENTERED in Tallahassee, Florida, this 6th day of September, 1995.

DON W. DAVIS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of September, 1995.

APPENDIX

In accordance with provisions of Section 120.59, Florida Statutes, the following rulings are made on the proposed findings of fact submitted on behalf of the parties.

Respondent's Proposed Findings

1.-24.	Adopted, not verbatim.
25.-28.	Rejected, unnecessary.
29.-40.	Adopted by reference.
41.-42.	Rejected, unnecessary.

Petitioner's Proposed Findings

Petitioner's proposed findings consisted of one paragraph requesting that Respondent provide coverage for Petitioner's son effective on the date of his birth, October 13, 1994. The proposed finding is rejected as not supported by the greater weight of the evidence.

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.