

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDWARD HERNANDEZ,)
)
 Petitioner,)
)
 vs.)
) CASE NO. 96-5509
 DIVISION OF STATE EMPLOYEES)
 INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On January 21, 1997, a formal administrative hearing was held by video in this case in Tallahassee, Florida, before Richard Hixson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward Hernandez (representing himself)
Post Office Box 173265
Tampa, Florida 32672-1265

For Respondent: Cindy Horne, Assistant General Counsel
Department of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUES

The issues for determination in this case are: 1) whether Respondent failed to provide Petitioner proper notice of continuation health care coverage under the Florida Employees Group Insurance Program; and, 2) whether Petitioner is entitled

to reimbursement for medical expenses incurred subsequent to termination of his employment.

PRELIMINARY STATEMENT

On September 5, 1996, Petitioner, EDWARD HERNANDEZ, filed a Petition for Declaratory Statement with the Florida Department of Management Services contesting a July 10, 1996 letter from Respondent, DIVISION OF STATE EMPLOYEES INSURANCE, in which Respondent declined to accept Petitioner's tender of a premium payment for continuation of health care insurance. The Petition was forwarded to the Division of Administrative Hearings on November 15, 1996. Although styled a Petition for Declaratory Statement, the Petition alleged disputed issues of material fact, and sought relief pursuant to Section 120.57(1), Florida Statutes. Accordingly, by order entered November 26, 1996, it was determined, without objection, that the case should proceed to formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. Formal hearing was held by video on January 21, 1997.

At hearing Petitioner testified in his own behalf, and also presented the testimony of one witness, Angelita Osorio. Respondent presented the testimony of one witness, Charles A. Salerno, Chief of Customer Services for Respondent.

The parties agreed to the introduction of Joint Exhibit 1, a composite of documents comprising the Petitioner's file in

this matter. Additionally, Respondent presented two additional exhibits which were received in evidence. The transcript of the hearing was filed on February 7, 1997. Respondent filed a Proposed Recommended Order on February 13, 1997. Petitioner filed his Proposed Recommended Order on February 20, 1997.

FINDINGS OF FACT

1. Petitioner, EDWARD HERNANDEZ, is a former employee of the University of South Florida (USF) in Tampa, Florida.

2. Respondent, DIVISION OF STATE EMPLOYEES INSURANCE, is the agency of the State of Florida responsible for the administration of the Florida Employees Group Insurance Program.

3. On July 7, 1994, Petitioner was terminated from his employment as a library technical assistant with the University of South Florida in Tampa, Florida. Petitioner's employment termination resulted from a poor performance appraisal, and did not result from gross misconduct.

4. While employed with the University of South Florida, Petitioner participated in the Florida Employees Group Insurance Program, which participation included individual health care coverage provided by a Health Maintenance Organization (HMO). As an employee, Petitioner's contribution to the cost of such individual health care coverage was \$26.02 per month which was automatically deducted from his compensation by his employer. As an employment benefit, Petitioner's employer, the University

of South Florida, was responsible for, and paid the remaining cost associated with Petitioner's health care coverage.

5. On July 27, 1994, Respondent DIVISION OF STATE EMPLOYEES INSURANCE, received notification of Petitioner's termination of employment from USF.

6. On August 10, 1994, Respondent initially mailed a notice to Petitioner informing him of his eligibility for continuation coverage. The initial notice of continuing coverage was mailed to Petitioner at PO Box 17803, Tampa, Florida, 33682, which at that time was the address listed for Petitioner in the Employees Group Insurance Program system. In April of 1994, however, Petitioner had relocated, and Petitioner's mailing address in August of 1994 was 12741 North 17th Street. Petitioner had informed the University of South Florida as to his change of address; however, for reasons unknown, Petitioner's change of address was not entered into the Employees Group Insurance Program system. Petitioner, accordingly, did not receive the initial notice of continuation coverage mailed by Respondent on August 10, 1994, nor was the initial notice returned to Respondent.

7. Almost eighteen months later, on March 11, 1996, Respondent received a letter of inquiry from Petitioner dated March 8, 1996, stating that Petitioner had significant medical

needs and was awaiting notification from Respondent of his eligibility for continuing coverage.

8. Respondent's staff reviewed Petitioner's letter dated March 8, 1996 to determine whether receipt of the initial notice of continuation coverage could be verified. Because Respondent's 1994 records had already been archived, there was a question at that time regarding verification that the initial notice of continuation coverage had been properly mailed to Petitioner. Accordingly, on June 6, 1996, Respondent in good faith mailed a second notice of continuation coverage to Petitioner which provided for retroactivity back to the date of Petitioner's termination of employment.

9. Petitioner received the second notice of continuation coverage.

10. The second notice of continuation coverage stated that Petitioner was eligible for individual continued coverage for the eighteen consecutive months after termination of his employment with USF. The notice stated that the group coverage in effect for Petitioner at the time of his termination was a Health Maintenance Organization (HMO). The notice specifically stated in bold print that the cost of the premium for individual continuation coverage was \$162.61 per month. This amount represents the cost of the premium of \$158 plus a two percent (2%) administrative fee. This amount does not exceed 102% of

the applicable premium cost for such period. The notice further stated that the application and premium must be postmarked no later than August 6, 1996. Under the terms of the notice of continuation coverage, if implemented, Petitioner's continuation coverage would begin on September 1, 1994, and would be reinstated for the eligibility period of eighteen consecutive months from that date.

11. On June 16, 1996, Petitioner executed the application for continuation coverage, and enclosed a premium payment in the amount of \$26.02, which represented Petitioner's cost for coverage while employed with the University of South Florida. Petitioner also enclosed a letter dated June 22, 1996, stating his position to Respondent regarding the retroactivity of coverage and the basis for his contention that he should not be required to pay a premium in excess of his cost prior to termination of employment. Petitioner further requested reimbursement from Respondent in the amount of \$272.27 for medical expenses incurred by Petitioner during the period between termination and receipt of the second notice of continuation coverage.

12. Respondent received Petitioner's application, payment and letter on June 25, 1996.

13. On July 10, 1996, Respondent sent Petitioner a notice stating that Petitioner's premium payment would not be accepted,

and further stating that " your letter has been forwarded to the Director's Office for further review, they will be corresponding with you on this matter shortly."

14. On September 5, 1996, Petitioner filed a Petition for Declaratory Statement with Respondent which as indicated above, instituted these proceedings.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57, Florida Statutes.

16. Petitioner has the burden of proving the allegations of his petition by a preponderance of the evidence. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So.2nd 778 (Fla. 1st DCA 1984)

17. The evidence establishes that Petitioner was eligible for, and entitled to continuation coverage for health insurance under 42 U.S.C., subsections 300bb *et. seq.* Petitioner's eligibility for continued coverage is further governed by 29 U.S.C., subsections 1161, 1162, 1166.

18. Title 29 U.S.C., Section 1162(3)(A) and 42 U.S.C., Section 300bb-2(3) state in pertinent part:

Premium Requirements. The plan may require a premium for any period of continuation coverage except that such premium-
(A) shall not exceed 102% of the applicable premium for such period.

19. In accordance with the above-referenced federal statutes, an eligible employee is required to pay up to 102% of the premium. The notification sent to Petitioner by Respondent accordingly met the requirements of federal law.

20. In this regard, the Department of Management Services (DMS) promulgated Rules 60P-2.013 and 2.015, Florida Administrative Code, regarding continuation coverage for dismissed employees. (The 1994 rules are the rules in effect at the time of Petitioner's termination, and govern this case.)

21. Rule 60P-2.013(1) provided:

If an insured employee is dismissed, he or she is no longer eligible for coverage under the Health Plan, but may convert to a direct pay plan offered by the administrator within thirty-one (31) calendar days after termination of coverage. The administrator shall issue such standard contract as is issued to direct payment subscribers and at its stipulated rates then in effect.

22. In compliance with federal law and departmental rules, DMS properly mailed a notice to Petitioner at his address of record within thirty (30) days of termination. Petitioner, for reasons unknown, did not receive the notice at his forwarding address. Eighteen months later Petitioner sent Respondent an inquiry letter. In good faith, Respondent sent Petitioner a second notice offering continuation coverage, mailed in June of 1996. The second notice specifically set out the terms of

continuation coverage, including the specification that the premium due for continuation coverage was \$162.61, which is the appropriate cost of the continuation coverage premium under state and federal law.

23. In support of his position Petitioner cites 42 U.S.C., Section 300bb-4(1), which provides:

(1) In general

The term "applicable premium" means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

This section, however, specifically requires Respondent to calculate the "applicable premium" at "the cost to the plan," not the cost to Petitioner. The evidence reflects that "the cost to the plan" for Petitioner's applicable premium was \$162.61 per month. Accordingly, Petitioner is not entitled to continuation coverage at his cost of \$26.06 per month.

24. The evidence fails to establish that Respondent acted in violation of federal or state law. The evidence fails to establish that Petitioner is entitled to continued coverage at the premium contribution cost of a full-time employee, or that Petitioner is entitled to \$272.27 in medical costs incurred subsequent to his termination of employment.

25. Should Petitioner pay the amount required for continuation coverage, Respondent has the authorization to then allow Petitioner to re-institute continuation coverage for the eighteen-month period following his termination of employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Respondent enter a Final Order denying the petition.

DONE and ORDERED this 25th day of February, 1997, in Tallahassee, Florida.

RICHARD HIXSON
Administrative Law Judge
Division of Administrative Hearings
DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax Filing (904) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of February, 1997.

COPIES FURNISHED:

Edward Hernandez, Esquire
Post Office Box 173265
Tampa, Florida 32672-1265

Cindy Horne, Assistant General Counsel
Department of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-0950

A. J. McMullian, III, Director
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions should be filed with the agency that will issue the Final Order in this case.