

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JUDY STAHL,)
)
 Petitioner,)
)
 vs.) Case No. 05-1850
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE)
 GROUP INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on September 30, 2005, by video teleconference with sites in Lauderdale Lakes and in Tallahassee, Florida.

APPEARANCES

For Petitioner: Mark J. Berkowitz, Esquire
Mark J. Berkowitz, P.A.
524 South Andrews Avenue, Suite 200N
Fort Lauderdale, Florida 33301

For Respondent: Sonja P. Matthews, Esquire
Department of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

The issue presented is whether Petitioner is eligible to participate in the State of Florida's group health insurance plan.

PRELIMINARY STATEMENT

Petitioner, Judy Stahl, a former employee of the State of Florida, requested participation in the State of Florida's group health insurance plan upon her retirement several years after her resignation. Respondent, Department of Management Services, Division of State Group Insurance, denied her request for the reason that she was not a member of the State's group insurance program, or continuously insured under that program, upon her retiring. Petitioner timely requested an administrative hearing regarding that determination, and this cause was transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

Petitioner testified on her own behalf. Respondent presented the testimony of Verla Lawson, Juanita Tatum, and Janice Lowe. Additionally, Petitioner's Exhibits numbered 1-6 and Respondent's Exhibits numbered 1, 2, 4, 5, 9, 14, 16, 19, 22, 24, and 31-33 were admitted in evidence. At Respondent's request, official recognition was granted as to Section 110.123(2)(g), Florida Statutes (2002) and (2004); Florida Administrative Code Rules 22K-1.211, 60P-1.003(4) and (5), and

60P-2.015(1), (2), and (6); 42 U.S.C.A. §§ 300bb-1 through 3 and 6, and 26 CFR §§ 54.4980B-1 through 7.

Both parties submitted proposed recommended orders after the conclusion of the final hearing. Those documents have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. Petitioner Judy Stahl began her employment with the State of Florida as a public assistance specialist with the Department of Children and Families on October 4, 1991. She began participating in the State's group health insurance program on December 1, 1991.

2. Petitioner voluntarily terminated her employment by the State on November 28, 2002, for personal reasons. In her letter of resignation she stated that it was her intention to again seek employment with the State after the personal situation which caused her to resign was concluded.

3. Premiums for the State's group health insurance are paid one month in advance. Therefore, Petitioner's coverage under the State's group health insurance program continued through the end of December 2002.

4. In January 2003, the State's Division of State Group Insurance notified Petitioner of her right to elect continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) and the federal Public Health

Services Act (PHSA). Petitioner so elected and continued her participation in the State's group health insurance under COBRA for the maximum period of 18 months that was available to her. Her continuation coverage expired June 30, 2004.

5. In May 2004 the State's Division of State Group Insurance notified Petitioner that her continuation coverage would soon expire and further advised her of her right to convert her insurance coverage to a private, individual policy. Petitioner exercised her option to convert to a private policy, effective July 1, 2004.

6. In March 2005 the Florida Division of Retirement sent Petitioner an Estimate of Retirement Benefits. The Estimate contained the comment that: "As a result of a review of accounts for terminated members, it was determined that you are eligible for retirement benefits." The Estimate form was accompanied by a pamphlet explaining the Florida Retirement System Pension Plan. It was also accompanied by information on the State Employees' Preferred Provider Organization (PPO) health plan. The retirement pamphlet included the information that health insurance was available to retirees; however, the health insurance information advised that health insurance was only available to certain retirees.

7. Petitioner concluded that if she retired, she could obtain cheaper health insurance from the State than from her

private provider. This was the first time that Petitioner considered the possibility of retirement.

8. Petitioner thereafter made many telephone calls to the Department of Children and Families, to the Division of Retirement, to the Division of State Group Insurance, and to People First, inquiring about retirement and insurance. These telephone inquiries were the first time she mentioned to any State employee or representative that she was interested in retiring.

9. At the end of March 2005 she made the decision to retire and submitted her application for retirement benefits. Her effective retirement date was April 1, 2005.

10. At the time Petitioner filed her application for retirement, she was no longer participating in the State's group health insurance program. At the time she filed her application for retirement, she was no longer participating in continuation coverage pursuant to COBRA. She was insured under a private policy.

11. At the time of her initial enrollment in the State group health insurance program, Petitioner signed a new enrollee form that, inter alia, advised her that eligibility and enrollment were governed by the provisions of Florida Administrative Code Rule 22K-1. During her employment she also enrolled in supplemental dental insurance. That enrollment

application form notified Petitioner that any changes in enrollment or coverage are governed by the federal Internal Revenue Code and the Florida Administrative Code. Throughout her employment and at the time that she terminated her employment, she completed Annual Benefits Open Enrollment forms, which also notified her that any changes in enrollment or coverage are governed by the Internal Revenue Code and the Florida Administrative Code.

12. While employed by the Department of Children and Families, Petitioner was provided with copies of the State of Florida Employees Group Health Self Insurance Plan Booklet and Benefit Document. Those booklets describe eligibility for participation to include employees, certain retirees, and COBRA participants. They also describe termination of coverage due to termination of employment and describe continuation coverage and conversion coverage.

13. At the time Petitioner retired, she was not a State employee; she was a former State employee.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

15. The State group health insurance program is authorized by Section 110.123, Florida Statutes. In addition to defining

an employee as someone who is paid a salary, that Section included the following language, both when Petitioner terminated her employment (2002) and when Petitioner retired (2004), in defining retired state employees:

(2)(g) 'Retired state officer or employee' or 'retiree' means any state or state university officer or employee who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement, and who was insured under the state group insurance program at the time of retirement, and who begins receiving retirement benefits immediately after retirement from state or state university office or employment.

16. At the time of Petitioner's initial enrollment in the State health insurance program, the applicable agency rules were contained in Florida Administrative Code chapter 22K-1. In relevant part, Rule 22K-1.211 provided:

(3) An employee who retires and does not elect to continue coverage as provided in this section will have coverage terminated and shall not be eligible to reenter the Health Plan at a later date except as provided under subparagraph (2)(b)1. [The exception refers to employees who retire while a disability application is pending.]

Thus, even an employee who retired and was not continuously insured within the State health care program was prohibited from later participating in the State's group health insurance.

17. By the time Petitioner terminated her employment, chapter 22K had been replaced by chapter 60P. Florida

Administrative Code Rule 60P-1.003 includes the following definitions:

(4) 'Continuation coverage' means coverage that is identical to the coverage provided under the Health Program to active employees which must be offered to qualifying employees and dependents in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA).

(5) 'Conversion plan' means a standard policy as is issued by the servicing agent to direct payment subscribers at applicable rates then in effect. An insured shall have the right to apply directly to the servicing agent in writing within thirty-one (31) days of the termination date of coverage under the Program.

18. Florida Administrative Code Rule 60P-2.015 contains specific provisions applicable to an employee who has terminated State employment, as follows:

(1) Coverage under the Health Program shall continue through the last day of the month for which a premium has been paid.

(2) An employee terminated from state employment for any reason or placed in other than a salaried position shall not be eligible to continue in the Health Program. Upon termination of coverage, the employee may, if eligible, purchase continuation coverage available through the Department [of Management Services] or purchase a conversion plan offered by the servicing agent.

* * *

(6) A terminated employee, eligible dependent or surviving spouse wishing to purchase continuation coverage must apply to

the Department within sixty (60) calendar days after notification of eligibility for such coverage. A terminated employee, eligible dependent or surviving spouse desiring to purchase a conversion plan offered by the servicing agent, must apply directly to the servicing agent, in writing, within thirty-one (31) calendar days after continuation coverage terminates. The servicing agent shall then issue such standard contract or policy as is issued to direct payment subscribers and at its stipulated rates then in effect.

19. COBRA is activated by a qualifying event. 42 U.S.C.A. 300bb-1(a). In this case, the qualifying event was Petitioner's voluntary termination of her employment. 42 U.S.C.A. 300bb-3(2). The Division of State Group Insurance provided Petitioner notice as required by COBRA. 42 U.S.C.A. 300bb-6. Neither the COBRA statute nor its applicable rules and regulations require the State to counsel Petitioner regarding her options, including retirement, upon her voluntary termination of employment. The only notice required under the federal statutes and rules relates to insurance, not retirement.

20. Similarly, and consistent with, Florida Administrative Code Rule 60P-2.015(2), when Petitioner's employment terminated, the Division of State Group Insurance notified her of her eligibility to obtain continuation coverage under COBRA, and when that continuation coverage ended, the Division notified Petitioner of her eligibility to obtain a conversion policy. All notices required by Florida statutes and rules to be given

to Petitioner were given to her. Further, Petitioner was on notice as to the content of applicable rules both by virtue of having been advised of them in writing throughout her employment and by virtue of implied or constructive knowledge. See Hall v. State, 823 So. 2d 757 (Fla. 2002); Town of Lauderdale-by-the-Sea v. Meretsky, 773 So. 2d 1245 (Fla. 4th DCA 2000).

21. For purposes of the State group insurance program, at the time of her retirement in March 2005, Petitioner was not a "retired employee" because she was not participating in the state group insurance program. Further, Petitioner was not eligible to rejoin the State group health plan at the time of her retirement in that she was not then a "retired employee" as defined in Section 110.123(2)(g), Florida Statutes.

22. Although Petitioner testified that someone at People First told her in March 2005 that she would be eligible for health care benefits if she retired, she did not testify as to what all the other people she talked to told her or as to what her question was that produced that answer. More importantly, this conversation, whatever it involved, took place in March 2005 at a time when she could not re-enter the State's group health insurance program whether she retired or not.

23. Petitioner argues, however, that her conversation with someone at People First gives rise to estoppel. In Florida, estoppel consists of the following elements: (1) a

representation by the party estopped to the party claiming the estoppel as to some material fact, which representation is contrary to the condition of affairs later asserted by the estopped party, (2) a reliance upon the representation by the party claiming the estoppel, and (3) a change in the position of the party claiming the estoppel to his detriment, caused by the representation and his reliance thereon. See Rayborn v. Department of Management Services, 803 So. 2d 747 (Fla. 3d DCA 2001). As a general rule, estoppel will not apply to a mistaken statement of the law. Dept. of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981).

24. Petitioner has not presented legally-sufficient evidence to demonstrate any of the elements necessary to show that estoppel should be applied against the Division of State Group Insurance. First, the question of eligibility is a matter of law as established by applicable statutes and rules and not a matter of fact. Therefore, any alleged statement of eligibility made to Petitioner in March 2005 cannot be used as a basis for estoppel. Second, Petitioner has not proven that she relied to her detriment on any statement allegedly made to her in March 2005. Third, Petitioner has not shown that she changed her position to her detriment based upon the alleged statement in March 2005. Petitioner has only proven that she retired based upon the information she was given in March 2005, but has

not proven that retiring was a detriment. As to participation in the State's group health insurance plan, she was not a participant before or after March 2005 and her April 1, 2005, retirement date did not impact her participation.

25. Petitioner has cited no authority for the proposition that the State has an obligation to advise each employee or former employee of the most advantageous time to retire based upon that person's unique circumstances. The State's failure to fulfill that non-existent obligation is the real thrust of Petitioner's position in this case.

26. Finally, Petitioner argues that the State should have advised her that her election of private insurance coverage after the cessation of COBRA continuation coverage rendered her ineligible to participate in the State group insurance plan upon her retirement. However, it was Petitioner's own act of terminating her employment, not her obtaining the private conversion policy, which rendered her ineligible to participate in the State group health insurance plan. COBRA afforded her continuation coverage for the maximum time allowed, and Petitioner's ability to continue that coverage concluded at the end of the COBRA period.

27. Petitioner is not eligible to re-join the State's group health insurance plan pursuant to her own decisions and

consistent with the clear language contained in the federal and state statutes and rules.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding that Petitioner is not eligible to participate in the State's group health insurance program.

DONE AND ENTERED this 19th day of January, 2006, in Tallahassee, Leon County, Florida.

Linda M. Rigot

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of January, 2006.

COPIES FURNISHED:

Mark J. Berkowitz, Esquire
Mark J. Berkowitz, P.A.
524 South Andrews Avenue, Suite 200N
Fort Lauderdale, Florida 33301

Sonja P. Matthews, Esquire
Department of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-0950

Tom Lewis, Jr., Secretary
Department of Management Services
4050 Esplanade Way
Tallahassee, Florida 32399-0950

Alberto Dominguez, General Counsel
Department of Management Services
4050 Esplanade Way
Tallahassee, Florida 32399-0950

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 to this Recommended Order should be filed with the agency that will issue the Final Order in this case.