

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES D. WELLS, JR.,)
)
 Petitioner,)
)
 vs.) Case No. 07-3206
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE)
 GROUP INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings, on September 18, 2007, in Tallahassee, Florida.

APPEARANCES

For Petitioner: James D. Wells, Jr.
Department of Highway Safety
and Motor Vehicles
2900 Apalachee Parkway, Mail Stop 47
Tallahassee, Florida 32399

For Respondent: Sonja P. Matthews, Esquire
Department of Management Services
Office of the General Counsel
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PRELIMINARY STATEMENT

In 2006, Petitioner requested reimbursement from his Flexible Spending Account (FSA) for qualified dependent daycare

expenses incurred in plan year 2005. The Department of Management Services (Department) denied his request. The denial was based on the untimeliness of the request. Petitioner disagreed with the Department's denial and requested a formal administrative hearing. Petitioner's request was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner testified on his own behalf and offered one exhibit into evidence. The Department presented the testimony of four witnesses and offered 19 exhibits into evidence. After the hearing, Petitioner and Respondent submitted Proposed Recommended Orders on October 8, 2007.

FINDINGS OF FACT

1. Under Section 26 of the United States Code Section 125, the federal government allows employers to establish programs that provide a federal income pre-tax benefit to employees. To maintain the pre-tax benefit, the employer is required to administer the program in compliance with applicable federal laws, rules and regulations.

2. Employers participating in the 125 pre-tax program are required to implement a written plan (Cafeteria Plan) and take deductions from an employee's earned income that are credited to the employee's flexible spending account (FSA) for the purpose of paying medical and/or dependent care expenses. The State of

Florida has developed such a plan. The FSA program is managed by Respondent, Department of Management Services.

3. Petitioner, James D. Wells, Jr., has maintained a FSA daycare reimbursement account since 1994. During the 2005 plan year, Petitioner was an enrolled member of the Daycare Reimbursement program. In 2005, Petitioner contributed \$3,000.00 to his account.

4. The reimbursement filing deadline for Plan Year 2005 was April 17, 2006. The deadline for 2005 occurred because the normal deadline day of April 15th fell on a weekend. Therefore, the deadline was moved by rule to the first regular business day following April 15th.

5. Petitioner obtained a receipt for eligible expenses for 2005 totaling \$3800.00 from the Immanuel Baptist Church Daycare. On March 27, 2006, he took the receipt to his office. While at work, he filled out the appropriate reimbursement request form. Petitioner placed these documents in an envelope with the correct postage and address on it. He placed the envelope in his inter-office mail receptacle.

6. Mail placed in the inter-office receptacle is picked up by an employee of Petitioner's agency, taken to the agency mailroom, and there picked up by the U.S. Postal Service. The inter-office mail receptacle is neither owned nor controlled by the U.S. Postal Service. Consequently, personal mail is not

postmarked until it is received at the U.S. Postal Service. There is no evidence that Petitioner's envelope was received by the U.S. Postal Service or that it was postmarked by the U.S. Postal Service.

7. The address on the People First reimbursement form reads: "People First Service Center, Flexible Spending Account, Post Office Box 1800, Tallahassee, Florida 32302-1800." The address is a post office box of the U.S. Postal Service, owned by Fringe Benefits Management Company (FBMC).

8. FBMC is a private entity that processes benefits for various private and public employees, including the State of Florida's flexible spending accounts. FBMC does not have access to any information regarding a claimant's dependents and does not verify the authenticity of the names of the dependents or whether the claimant has dependents.

9. FBMC uses Post Office Box 1800 specifically for FSA reimbursement requests submitted by all employees of FBMS clients. The U.S. Postal Service separates all of the mail addressed to Post Office Box 1800 and places it in bins, which are picked up each day by FBMC mailroom employees.

10. The mailroom employees deliver the mail to the claims area at FBMC. Mail processors open each piece of mail and enter the name and/or social security number of the claim and amount

of requested reimbursement in the FBMC computer system. Each claim is labeled as pending in the system.

11. For each batch of 50 reimbursement requests entered into the system, the mail processors print a list of the 50 claims and attach the associated paper work for each claim into a batch. Each batch of 50, the list and actual forms are then delivered to "adjudicators" who again input the name and/or social security number directly from the reimbursement form. The adjudicator also determines whether the attached documentation supports the amount of the claim. Once the adjudicator enters the 50 requests into the system, the adjudicator prints another list of names.

12. If either the mail processor or adjudicator enters incorrect information into the computer system, the adjudicator will produce a list that does not match the mail processor's list. At that point, the mail processor's list and the adjudicator's list are reconciled.

13. During reconciliation, if the adjudicator discovers a claim form that does not appear in the pending computer file, the adjudicator will add the name to the pending file or personally deliver the request to the mail processor to enter into the pending file. If the identification data of the claimant entered by the adjudicator matches the information in the "pending file," and if the backup documentation in support

of the claim is adequate as to amount, FBMC authorizes payment; if not, the claim is denied. The claim information is then sent to Convergys to process the claim.

14. Convergys is a private entity that administers the State of Florida human resources and personnel system. Convergys has subcontracted with FBMC to process the payments of FSA requests for reimbursement.

15. Upon receipt of files from FBMC, Convergys responds to all reimbursement requests it receives from FBMC. It either processes payment for approved requests or provides written notification that the claim has not been approved for payment.

16. In June 2006, Petitioner had not received any information regarding his claim and had not received the documents back from the post office. He called the agency and discovered that it did not have any record of his claim. He explained that he had mailed it prior to April 17, 2006. Both FBMC and Convergys searched their records for Petitioner's claim.

17. Convergys had no record of receiving Petitioner's claim from FBMC.

18. FBMC searched every "James Wells" in its database listed for each employer-client to whom reimbursements were paid for the 2005 Plan Year. No payment was processed for any other James Wells. FBMC also physically searched all claims from all

employees of all its clients, beginning March 27, 2006, through April 22, 2006. Each claim was pulled and each sheet of paper attached to each claim was reviewed. Petitioner's claim was not located. Given the mail and claim handling procedures used by FBMC in processing claims, it does not appear that Respondent received Petitioner's claim by April 17, 2006. Therefore, Petitioner's claim for reimbursement was not timely filed in 2005, and Petitioner is not entitled to reimbursement. The request for hearing should be dismissed.

CONCLUSION OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

20. Administrative Rule Chapter 60P governs the State of Florida's Cafeteria Plan. The Rule states in relevant part:

60P-6.006. Cafeteria Plan

* * *

(3)b. "Claim Filing Deadline" is April 15 following the participant's period of eligibility. All initial prior year claims filings must be postmarked or received, when not mailed, at the Department on or prior to April 15 to be considered for processing. (Emphasis added.)

* * *

21. Additionally, Florida Administrative Code Rule 60P-6.0081 reads:

(3) Initial requests for reimbursement for expenses incurred during a participant's period of coverage must be postmarked or received if not mailed, at the Department no later than April 15 following the prior Plan Year. (Emphasis added.)

22. Section 110.161(8), Florida Statutes, and Florida Administrative Code Rule 60P-6.010, provide that any funds remaining in the participant's plan account are forfeited if claims for reimbursement are not properly filed by the filing deadline.

23. In the present case, the Petitioner attempted to mail his reimbursement request. The claim was not received by the Respondent's processing agent. Therefore, the issue is whether the evidence is sufficient to demonstrate that Petitioner's claim was postmarked before the April 17, 2006, deadline for submission of FSA claims.

24. The evidence showed that Petitioner placed the envelope containing his reimbursement request in his inter-office mail. He did not deliver the envelope to the U.S. Postal Service. There is no evidence that the envelope was picked up or delivered to the U.S. Postal Service by his agency's mailroom.

25. A rebuttable presumption that mail has been received arises after proof that the mail was correctly addressed and actually delivered to the U.S. Postal Service, Star Lakes Estate Ass'n., Inc. v. Auerbach, 656 So. 2d. 271 (Fla.3 DCA, 1995); W.T.Holding, Inc. v. State Agency for Health Care Administration, 682 So. 2d 1224, 1225 (Fla. 4th DCA 1996); Camerota v. Kaufman, 666 So. 2d 1042, 1045 (Fla. 4th DCA 1996); and Getelman v. Levey, 481 So. 2d 1236, 1239 (Fla. 3 DCA, 1985).

26. Petitioner's inter-office mail was not controlled by the U.S. Postal Service. Use of such mail is insufficient evidence to demonstrate that Petitioner's reimbursement request was deposited in the U.S. Mail and does not establish a presumption in favor of Petitioner that his claim was received by the Respondent or postmarked by the U.S. Postal Service.

27. Moreover, Respondent has shown that FBMC personnel charged with the responsibility of maintaining correspondence conducted a reasonable and diligent search in order to locate the envelope containing the reimbursement form in question. No documents relating to the claim were found.

28. Section 90.302, Florida Statutes, states:

Section 90.302. Classification of Rebuttable Presumptions

Every rebuttable presumption is either:

(1) A presumption affecting the burden of producing evidence and requiring the trier

of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or

(2) A presumption affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.

29. The presumption of receipt upon proper mailing is characterized as a "bursting bubble" presumption. It is a presumption established primarily to facilitate the determination of an action or event that generally should follow from the facts in evidence. Thus, the existence or occurrence of the presumed fact, such as receipt through the mail, is assumed unless credible evidence sufficient to sustain a finding of the non-existence of the presumed fact is introduced. See, Berwick v. Prudential Property and Cas. Ins. Co., 436 So. 2d 239, (Fla. 3d DCA, 1983); Cheryl and Richard Luten, individually, and as parents and natural guardians of Kaille Morgan Luten, a minor v. Florida Birth-Related Neurological Injury Compensation Association, DOAH Case No. 95-3708N, September 23, 1996; International Alliance of Theatrical Stage Employees and Moving Pictures Technicians, Artists and Allied Crafts of U.S., its Territories, and Canada Local 500 v.

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators Holding Co., Inc., 902 So. 2d 959, (Fla. 4th DCA, 2005); and David J. Russ v. Tallahassee-Leon County and Department of Community Affairs, and School Board of Leon County, DOAH Case No. 97-2950.

30. In Seglin Const. Co. v. State, 22 N.Y.S.2d 94, (N.Y. Ct. Cl. 1940), the court found that the evidence presented was sufficient to overcome the presumption of receipt upon proper mailing. The court's description of the evidence presented in opposition to the presumption was very similar to that offered in this case. The Seglin court wrote in relevant part:

The Attorney General called witnesses who described the method of receiving, opening and indexing mail in the office of the State Department of Public Works and other witnesses who described their search for the document. This testimony amounts to a denial by the defendant that the letter was ever received. Elmore v. Busseno, 175 App.Div.233, 161 N.Y.S. 533; Cashman, Inc. v. Spellman, 233 App.Div. 45, 251 N.Y.S. 240. Upon it and upon all the circumstances surrounding the transaction we believe that the presumption has been overcome and we find and hold that Exhibit 24 was never received by the State of New York.

See also Department of Health and Rehabilitative Services v. Pinellas Nursing Care, Inc., DOAH 82-0844, Recommended Order, August 11, 1982.

31. Here, the evidence was sufficient to overcome the presumption of receipt upon proper mailing. In the absence of

the presumption of receipt, Petitioner has failed to prove that his request was timely, as required by Florida's plan.

Therefore, Petitioner is not entitled to reimbursement and the request for hearing should be dismissed.

RECOMMENDATION

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

RECOMMENDED that the Respondent issue a Final Order finding that Petitioner did not timely file his reimbursement request, is not entitled to reimbursement and dismissing the request for hearing.

DONE AND ENTERED this 14th day of December, 2007, in Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of December, 2007.

COPIES FURNISHED:

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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.