

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARA GRIMES,)
)
 Petitioner,)
)
 vs.) Case No. 08-1720
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE)
 GROUP INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on July 11, 2008, in Orlando, Florida.

APPEARANCES

For Petitioner: Sara Grimes, pro se
3275 South John Young Parkway, No. 122
Kissimmee, Florida 34746

For Respondent: Sonja P. Matthews, Esquire
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 260
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STATEMENT OF THE ISSUE

The issue is whether Petitioner is eligible to purchase continuous coverage of health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA), also known as COBRA benefits, as COBRA is implemented in

Section 110.123, Florida Statutes (2005), and Florida Administrative Code Rule 60P-2.015.¹

PRELIMINARY STATEMENT

By letter dated February 7, 2008, Respondent notified Petitioner of the proposed denial of Petitioner's request to purchase COBRA benefits following her termination of employment. Petitioner timely requested an administrative hearing, and Respondent referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner testified, presented the testimony of two additional witnesses, and submitted 44 exhibits for admission into evidence. Respondent called four witnesses and submitted nine exhibits.

The identity of the witnesses and exhibits and the rulings regarding each are set forth in the record of the hearing. Neither party filed a transcript of the hearing with DOAH. However, Petitioner represented at the hearing that she would order a transcript, discovered the cost of a transcript, attempted to obtain a transcript through a public records request, and requested the undersigned to order the court reporter to provide a transcript. The delay created confusion for opposing counsel, and, pursuant to a motion from Petitioner, the ALJ ordered the parties to file their respective proposed recommended orders (PROs) no later than August 20, 2008. The parties timely filed their PROs on August 20, 2008.

FINDINGS OF FACT

1. Petitioner is a former state employee who participated in the state's Group Insurance Program (GIP) until the termination of her employment on November 3, 2005. Respondent is the state agency responsible for the administration of GIP.

2. Respondent contracts with an entity identified in the record as Convergys, Inc. (Convergys), for human resources management services. Convergys provides the principal part of its management services through an on-line computer system identified in the record as People First. However, final decisions concerning insurance coverage under GIP are statutorily prohibited from being delegated to Convergys.²

3. Health insurance premiums for state employees are paid one month in advance. Petitioner was a state employee at least one day in November 2005. Her participation and health insurance coverage through GIP continued through December 2005.

4. It is undisputed that Petitioner was entitled to elect COBRA benefits for 18 months following the termination of her employment. It is also undisputed that Petitioner was required to elect COBRA benefits no later than March 1, 2006, approximately 60 days after December 31, 2005, when Petitioner's participation in GIP ended.

5. The employing agency sent Convergys a notice of termination of employment. The People First system

automatically generated a COBRA notice on November 16, 2005. The COBRA notice, in relevant part, informed Petitioner that an election of COBRA benefits must be exercised no later than March 1, 2006. Petitioner's first contact with Convergys regarding her COBRA benefits was on March 23, 2006.

6. Petitioner claims she never received the COBRA notice. Convergys mailed the COBRA notice to the address of record for Petitioner at 730 East Lake Shore Boulevard, Kissimmee, Florida. Petitioner owned the house at the address of record, but the house had been damaged. Prior to September 7, 2005, Petitioner had changed her residence but continued to pick up the mail delivered to the address of the damaged house. Prior to March 23, 2006, Petitioner did not notify her employer or Convergys of a change of address.

7. On September 7, 2005, the personnel office of the employing agency sent a memorandum to agency employees, including Petitioner, that included directions for updating addresses of record. Petitioner did not take the action directed in the memorandum. Rather, Petitioner completed a form used by her supervisor for the supervisor's individual use and mistakenly assumed that her action was sufficient to notify Convergys of a change in her address of record.

8. While Petitioner was an active employee, she could change her address of record either through the personnel

office, in accordance with the memorandum Petitioner received on September 7, 2005, or on-line through People First. Employees of Convergys cannot permanently change the address of record of an active employee. Once Petitioner terminated her employment, an address change could only be made on-line through People First.

9. The security function of the People First system notes any access into an employee's account. No address change was made in Petitioner's account. The COBRA notice was sent to the address of record and was not returned.

10. Petitioner did not elect COBRA benefits on or before March 1, 2006. Petitioner is not entitled to continuation benefits under COBRA.

CONCLUSIONS OF LAW

11. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008). DOAH provided the parties with adequate notice of the final hearing.

12. Petitioner has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that she is entitled to COBRA benefits pursuant to Subsection 110.123(5) and Rule 60P-2.015. Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993); Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v.

Department of Health and Rehabilitative Services, 348 So. 2d 349
(Fla. 1st DCA 1977).

13. Rule 60P-2.015(6), in relevant part, requires Petitioner to apply for continuation coverage within 60 calendar days after notification of eligibility. The COBRA notice notified Petitioner that she must elect COBRA benefits no later than March 1, 2006. For reasons stated in the Findings of Fact and not repeated here, Petitioner did not elect COBRA benefits in a timely manner and is not entitled to continuation coverage.

RECOMMENDATION

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

RECOMMENDED that Respondent enter a final order denying Petitioner's application to purchase COBRA benefits.

DONE AND ENTERED this 12th day of September, 2008, in Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of September, 2008.

ENDNOTES

^{1/} References to subsections, sections, and chapters are to Florida Statutes (2005), unless otherwise stated. References to rules are to rules promulgated in the Florida Administrative Code.

^{2/} § 110.123(5).

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.