

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GAVIN NAYLOR,)
)
 Petitioner,)
)
 vs.) Case No. 09-2967
)
 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 August 24, 2009, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Gavin Naylor, pro se
1531 Tallavana Trail
Havana, Florida 32333

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

The issue presented is whether Petitioner is entitled to a refund of monies paid into his medical reimbursement account.

PRELIMINARY STATEMENT

By correspondence dated March 23, 2009, Respondent Department of Management Services, Division of State Group Insurance, advised Petitioner Gavin Naylor that his request to retroactively change the amount of his contribution to his medical reimbursement account was denied. Petitioner timely requested an administrative hearing regarding that determination, and this cause was transferred to the Division of Administrative Hearings to conduct the evidentiary hearing.

Petitioner testified on his own behalf and presented the testimony of Mandy Manning, Linda Lieblong, and Jackie Williams. The Department presented the testimony of Petitioner, Sandi Wade, and James West. Additionally, Petitioner's Exhibits numbered 2 and 3 and the Department's Exhibits numbered 1, 2, 7, 8, 13, 14, and 16 were admitted in evidence. Further, the Department's request for official recognition was granted as to Sections 110.123 and 110.161, Florida Statutes; 26 C.F.R. § 1.125-4; Chapter 60P, Florida Administrative Code, and 26 U.S.C. § 125.

No transcript of the final hearing was filed. The parties have submitted post-hearing proposed recommended orders which have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. Petitioner has a Ph.D and has been a professor at Florida State University (FSU) since November 2003.

2. Petitioner met his now-wife Veronika in England in September 2004. In the summer of 2005 she quit her job in London and came to Tallahassee. She enrolled in FSU's graduate program to fulfill the conditions of her visa.

3. Petitioner attempted to add her to his health insurance coverage claiming that she was a dependent or a "partner," reasoning that since she was living with him she was "effectively" his wife. When required to produce a marriage license, Petitioner was unable to do so. Accordingly, since she was not legally his spouse and, therefore, was not eligible to be covered under Petitioner's benefits, his attempt to include her in his health insurance coverage was unsuccessful.

4. From the beginning of his employment up through the time of the final hearing in this cause, Petitioner has received every year the Department's Benefits Guide for active State employees. He has also received additional information yearly regarding the State's benefits program and options during the annual open enrollment period.

5. In 2005 Petitioner began participating in the State of Florida's pre-tax flexible spending account program by setting

up a medical reimbursement account (MRA). Each year he had approximately \$600 deducted from his gross salary (pre-tax) to cover medical expenses not covered under his health insurance plan.

6. In 2008 he and Veronika began fertility treatments, incurring approximately \$14,000 in bills for these treatments. In April 2008 Veronika became pregnant. Petitioner and Veronika were married on May 7, 2008. Because his marriage was a qualifying status change, he was allowed to add her to his health insurance coverage because she became eligible as his spouse.

7. On approximately May 20, 2008, he took his check to the Human Resources office at FSU to pay the additional charge resulting from converting his health insurance from individual coverage to family coverage. He gave his check to Jackie Williams, who worked in that office and who had contacted him about the need to pay the additional money.

8. On that date he also made arrangements to increase his MRA from \$600 to \$5,000, with the increased payroll deductions to begin July 1 since he was on a nine-month contract.

9. In December 2008 he submitted a claim for reimbursement from his MRA for the fertility treatments that Veronika underwent prior to their marriage. That claim was denied

because the treatments occurred prior to the time that Veronika became an eligible dependent.

10. Since those expenses were not eligible for reimbursement, he next sought to reduce his election of \$5,000 for his MRA back down to his normal level of \$600. He told other personnel in FSU's Human Resources office that Williams had told him that he could claim reimbursement from his MRA for expenses incurred by Veronika before her marriage to him since the plan year for an MRA was from January through December.

11. Based solely upon Petitioner's assertion that Williams gave him wrong information, other personnel in that office directed a memorandum to People First telling that company, which operates the State of Florida's payroll and employee benefits services, that due to an "agency error" Petitioner's MRA should be reduced to its prior level. That request was also denied because a change in Petitioner's MRA could only be made during open enrollment or because of a qualifying status change, and neither condition applied.

12. Jackie Williams remembers her contacts with Petitioner because Veronika spells her name with a "k," which is an unusual way to spell it. Williams only discussed with Petitioner his health insurance coverage and did not discuss with him his MRA.

13. Petitioner asserts that the Benefits Guide, which he consulted, lends credence to the misinformation he says Williams

gave him because it provides in the section describing MRAs:

"The entire amount in your account is available at the beginning of the plan year." That sentence, however, speaks only to the issue of the timing of claims filed against the account. It does not speak to the eligibility of expenses claimed.

14. The Benefits Guide is very clear as to who is eligible to receive benefits under the State's employee benefits options. It uses plain language that has not changed from year to year although the page number on which the explanation is given may change. The Benefits Guide for 2008 on page 11, for example, states clearly that all active full-time or part-time State of Florida employees qualify for coverage under the benefits plans described in the Guide plus the employee's spouse and children.

15. Eligibility for reimbursement of expenses is quite different from the time period during which claims for eligible expenses can be made. Although the State's MRA plan year runs from January through December, the expenses of only eligible persons will be covered. Since Veronika and Petitioner did not marry until May 7, 2008, her medical expenses before that date do not qualify for reimbursement from Petitioner's MRA, just as she did not qualify to be added to Petitioner's health insurance coverage until they married.

16. To the extent that Petitioner claims he was misled by Jackie Williams, his argument is not persuasive. First,

Petitioner had his Benefits Guide which gave the correct information, and his reliance on one sentence in the Guide which does not refer to eligible persons or eligible expenses is illogical and misplaced. Second, Williams' testimony that she did not discuss his MRA with him and that she remembers her transactions with him because of the unusual spelling of Veronika is credible and was supported by the way both Petitioner and Williams referred to that spelling during her testimony at the final hearing.

17. Veronika's medical expenses incurred before her marriage to Petitioner do not qualify for reimbursement from Petitioner's MRA. Further, Petitioner is not entitled to a reduction in his 2008 MRA contribution due to an "agency error" or a misrepresentation by FSU's Human Resources office because no agency error or misrepresentation was made. Quite simply put, Petitioner herein seeks a benefit of marriage prior to the time he was entitled to enjoy it under both the law and the State of Florida's employee benefits plans.

CONCLUSIONS OF LAW

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

19. Petitioner bears the burden of proof in this proceeding. See Florida Dept. of Transp. v. J.W.C. Co., 396

So.2d 778 (Fla. 1st DCA 1981); Balino v. Dept. of Health and Rehab. Serv., 348 So. 2d 349 (Fla. 1st DCA 1977); and Young v. Dept. of Community Affairs, 625 So. 2d 831 (Fla. 1993).

Petitioner has failed to meet his burden of proving his allegation by a preponderance of the evidence.

20. The State of Florida Flexible Spending Accounts (FSA) were established pursuant to Section 110.161, Florida Statutes, the State Employees Pretax Benefits Program Act. An FSA provides a federal income tax benefit by reducing an employee's reportable gross income. One type of FSA, the medical reimbursement account (MRA) covers qualified medical expenses not otherwise covered by health insurance.

21. The rules applicable to the State of Florida's pre-tax program are primarily found in Chapter 60P-6, Florida Administrative Code, and, by references therein, Chapter 60P-2 is also applicable. Among the definitions found in Florida Administrative Code Rule 60P-6.006 is the definition of "qualifying status change (QSC) event" or "QSC event," which means "the change in employment status, for subscriber or spouse, family status or significant change in health coverage of the employee or spouse attributable to the spouse's employment." Fla. Admin. Code R. 60P-6.006(13). That Rule also defines the "plan year" as a 12-month period beginning January 1 and ending December 31. Fla. Admin. Code R. 60P-6.006(11).

Further, "health care expenses" are defined as "any unreimbursed eligible expenses incurred by a participant or by a spouse or dependent of such participant for medical care." Fla. Admin. Code R. 60P-6.006(7).

22. Florida Administrative Code Rule 60P-6.0068(2), provides that during a plan year an election is irrevocable except when a participant in a pre-tax plan experiences a QSC event. Petitioner was able to make a change in his 2008 MRA during the plan year because he experienced a QSC event in 2008 due to his marriage to Veronika, but he experienced no other QSC event that year which would allow him to make the second change which he seeks in this proceeding.

23. Section 110.161(5), Florida Statutes, authorizes the Department of Management Services to develop rules for the pre-tax program. Subsection (6)(c) requires the Department to take all actions necessary to preserve the tax-exempt status of the program. To maintain the pre-tax benefit, employers are required to administer the program in compliance with the Internal Revenue Code (26 U.S.C. § 125), the applicable federal rules and regulations, and the employer's written plan. The State of Florida's administrative rules clearly provide that a spouse is covered but a girlfriend is not. Accordingly, approving Petitioner's request that his girlfriend's medical expenses be reimbursed would violate the State of Florida's

written plan and would jeopardize the tax-exempt status of the State's MRA FSA.

24. Though not requested as such by Petitioner, he is requesting retroactive reduction of his MRA based upon the theory of estoppel. He argues that the Department should not deny the retroactive reduction because of a misrepresentation by an FSU personnel employee. This tribunal does not have jurisdiction to grant equitable remedies. § 26.012, Fla. Stat.

25. Even if there were jurisdiction to award equitable relief in this proceeding, Petitioner would have the burden of proving the following elements: (1) a representation by a party as to some material fact, (2) reliance on that representation by the party claiming estoppel, and (3) a change in the party's position caused by his or her reliance on the representation to his detriment. See, e.g., Shaffer v. School Bd. of Martin County, 543 So. 2d 335 (Fla. 4th DCA 1989).

26. Further, as a general rule, estoppel may be applied against the state only in rare instances or under exceptional circumstances. Dolphin Outdoor Advertising v. Dept. of Transp., 582 So. 2d 709 (Fla. 1st DCA 1991).

27. Petitioner has not proven a factual basis for applying equitable estoppel in this proceeding. It has been found that Jackie Williams did not discuss Petitioner's MRA with him and,

therefore, did not misrepresent a material fact. Accordingly, Petitioner has also failed to prove that he relied on that misrepresentation and that he changed his position to his detriment due to his reliance on that misrepresentation.

28. Even if Petitioner were provided misinformation as alleged by him, his reliance was not reasonable in that the information was readily available in the administrative rules and in the Benefits Guides which Petitioner received each year. Further, based upon his previous experience Petitioner knew or should have known that benefits are available only to "legal spouses." Council Bros., Inc. v. City of Tallahassee, 634 So. 2d 264 (Fla. 1st DCA 1994).

29. As a general rule, estoppel will not apply to mistaken statements of the law. Dept. of Rev. v. Anderson, 403 So. 2d 397 (Fla. 1981). The question of eligibility of medical expenses that can be reimbursed from an MRA is a question of law in that the requirements are established by the Department's substantive statutes and administrative rules.

30. Even if the alleged misrepresentation had been made, FSU is a separate entity from the Department, and representations made by FSU cannot be attributed to the Department. Bright v. Dept. of Management Serv., Div. of Retirement, DOAH Case No. 03-2142 (F.O. 4/8/04). Further, Section 110.123(5), Florida Statutes, provides that final

decisions regarding the State's group insurance program cannot be delegated by the Department.

RECOMMENDATION

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

RECOMMENDED that a final order be entered denying Petitioner's request for a retroactive reduction in his MRA.

DONE AND ENTERED this 16th day of September, 2009, in Tallahassee, Leon County, Florida.

Linda M. Rigot

LINDA M. RIGOT
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of September, 2009.

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.