

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DETRICK MURRAY,)
)
 Petitioner,)
)
 vs.) Case No. 10-0098
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF STATE)
 GROUP INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was held in this case on April 1, 2010, by video teleconference between sites in Miami and Tallahassee, Florida, before Administrative Law Judge Eleanor M. Hunter of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Detrick Murray, pro se
4370 Northwest 187th Street
Miami, Florida 33055

For Respondent: Sonja P. Mathews, Esquire
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to a refund from the State of Florida Group Health Self Insurance Plan of pre-tax supplemental insurance premiums in the amount of \$47.46 or

\$47.45 a month that were deducted from his pay for the 2007 and 2008 insurance plan years.

PRELIMINARY STATEMENT

In a letter dated July 21, 2009, Respondent rejected Petitioner's Level II appeal seeking a refund of premiums deducted from his pay for pre-tax supplemental accident/disability insurance in 2007 and 2008. On August 12, 2009, Petitioner filed a request for mediation or an informal hearing. Because disputed issues of material fact emerged at an informal hearing on December 11, 2009, the case was transferred to the Division of Administrative Hearings on January 11, 2010. As scheduled in the notice of hearing issued on January 22, 2010, the formal hearing was held on April 1, 2010.

At the hearing, Petitioner represented himself and testified on his own behalf. Petitioner also moved Respondent's Exhibits 1, 2, and 5 which were received into evidence. Respondent presented the testimony of Sandi Wade and James West, and Respondent's Exhibits 3, 4, and 6 through 15 which were received into evidence. At the request of Petitioner, Respondent's late-filed Exhibit 16 was submitted and received into evidence on April 6, 2010. Proposed Recommended Orders were filed by Respondent on April 28, 2010, and by Petitioner on May 4, 2010. The parties did not request a transcript of the

proceedings. Based on all of the evidence, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner, Detrick Murray ("Petitioner" or "Mr. Murray") was, at all times relevant to this proceeding, employed by the Florida Department of Corrections. As a state employee, he was given the option to participate in a pre-tax supplemental accident/disability insurance plan. Benefits, including insurance plans, are administered by a private contractor, Convergys, through a project called "People First," operated on behalf of Respondent, Department of Management Services, Division of State Group Insurance ("Respondent or the Division").

2. During the 2005 open enrollment period for the 2006 plan year, Mr. Murray elected to participate in a state-sponsored supplemental/accidental policy offered by Colonial Insurance Company ("Colonial").

3. The reverse side of the enrollment provided the following information and instructions:

The enrollment form must be used to enroll in or change coverages. **No changes will be accepted by e-mail or letter.**

Enrolling in a supplemental insurance plan, or changing options, does not automatically stop other coverages you currently have. **To stop an existing coverage**, you must place an

"S" in the box provided for that Plan on the front of this form (Part 1). Only complete Part 2 on the front of this form if you wish to stop plans currently not offered.

The Supplemental Enrollment Form **must** be submitted to the People First Service Center. **Enrollment changes will not occur if forms and/or applications and the Supplemental Company Application are submitted directly to the supplemental insurance company.**

If you cancel or do not enroll in supplemental insurance, **you will not be able to enroll again until the next annual open enrollment period, unless you experience a Qualifying Status Change.**

Supplemental premiums are deducted on a pre-tax basis.

It is your responsibility to ensure that your enrollment selections are in effect. **Check your payroll warrants to ensure that your deductions properly reflect your selections.** Contact the People First Service Center immediately if these deductions are not correct.

I understand my enrollment and/or changes will be effective the first of the month following a full payroll deduction. I also understand my elections are IRREVOCABLE until the next annual open enrollment period, unless I have a Qualifying Status Change as defined by the Federal Internal Revenue Code and/or the Florida Administrative Code. I understand that I must request such changes within thirty-one (31) calendar days of the Qualifying Status Change.

4. The open enrollment period for the next year, the 2007 plan year, began on September 19, 2006, and ended on October 18,

2006. On October 14, 2006, Mr. Murray notified Colonial that he wanted to cancel the supplemental insurance for the 2007 plan year. He used a Colonial Request for Services form and sent it to the Colonial Processing Center in Columbia, South Carolina.

5. In a letter dated February 14, 2007, Colonial acknowledged receiving Mr. Murray's request to cancel the insurance during the 2006 enrollment period, and informed him of its receipt of an "overpayment" of \$47.46 monthly beginning January 1, 2007. Colonial directed Mr. Murray to contact his personnel officer "which will then work through the Division to issue your refund."

6. After the open enrollment period ended, Mr. Murray had also contacted People First on November 14, 2006, and gave notice of his attempt to cancel with Colonial. He was informed that Colonial had not informed People First of the cancellation. Mr. Murray contacted People First again on January 29, 2007, questioning the continued payroll deductions and requesting a refund, as Colonial had suggested. He was told that he would have to cancel with People First during the open enrollment period, but he could send a letter of appeal to try to get a refund of premiums and try to cancel sooner.

7. Despite repeated contacts, requests for refunds, and appeals to People First during 2007, Mr. Murray continued to

have premiums for supplemental insurance deducted from his pay check. Ultimately, the Division denied his appeal.

8. Although Mr. Murray was trying to get a refund for 2007 payroll deductions, he again failed to notify People First to cancel the insurance during the open enrollment period between September 17, 2007, and October 19, 2007, for the 2008 plan year. There is no evidence that Mr. Murray had a qualifying status change, as required by federal and state law, that would have permitted him to cancel the insurance at any time other than during open enrollment periods for the 2007 and 2008 plan years.

9. The enrollment period for the 2009 plan year began on September 22, 2008, and ended on October 17, 2008. On September 24, 2008, Mr. Murray cancelled the supplemental insurance for the 2009 plan year by making a telephone call to a People First representative.

10. In a late-filed exhibit produced by a manager for Convergys at the request of Petitioner, the Division showed that payments were made to Colonial to insure Mr. Murray through November 24, 2008.

11. Sandi Wade, the Division's benefits administrator, noted that Colonial should not have canceled Mr. Murray's insurance policy. Colonial had no authority to send the letter of February 14, 2007, incorrectly telling Mr. Murray he was

entitled to a refund. Ms. Wade's observations prompted Mr. Murray to question what, if any, remedies he might have with regard to Colonial's error. That issue is not and cannot be considered in this proceeding.

12. In the absence of evidence that the Division or its agents were notified to cancel the supplemental insurance during open enrollment periods for 2007 and 2008, or based on a qualifying status change, Petitioner's request for a refund of premiums must be denied.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2009).

14. Petitioner, a full-time state employee, was eligible to participate in the state insurance plan, and properly enrolled during the open enrollment period in 2005 for the 2006 plan year, as provided by Florida Administrative Code Rules 60P-10.001 and 60P-10.002.

15. Respondent is the state agency created to administer the state group insurance program that includes supplemental insurance plans, pursuant to Section 110.123, Florida Statutes (2009).

16. Section 110.123(3)(h)5., Florida Statutes (2009), permits changes to the plans as follows:

All enrollees in a state group health insurance plan, a TRICARE supplemental insurance plan, or any health maintenance organization plan have the option of changing to any other health plan that is offered by the state within any open enrollment period designated by the department. Open enrollment shall be held at least once each calendar year.

17. Florida Administrative Code Rule 60P-10.003 also describes the circumstances in which changes in an insurance plan, including cancellations of policy, are permitted and provides the following:

An employee may elect, change, or cancel coverage within thirty-one (31) days of a Qualified Status Change (QSC) event if the change is consistent with the event pursuant to subsection 60P-2.003(7), F.A.C., or during the open enrollment period.

18. Respondent, the administrator of the pre-tax program, is required by Section 125 of the Internal Revenue Code, to comply with the provisions set forth in Section 110.123(3)(h)5., Florida Statutes (2009), and Florida Administrative Code Rule 60P-10.003(1).

19. In this case, Petitioner asserts the affirmative of the issues, that he is entitled to a refund for premiums deducted for insurance coverage in 2007 and 2008. He, therefore, has the burden of proving by a preponderance, or the


greater weight, of the evidence that his premiums should be refunded based on his cancellation of the supplemental insurance policy. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

20. The evidence supports a conclusion that Petitioner did not intend to continue coverage in the 2007 and 2008 plan years, but he did not notify People First to cancel his coverage during the open enrollment periods, as required by law. Because of his failure to notify People First, Petitioner is not entitled to a refund of his premiums from Respondent.

RECOMMENDATION

Based on the foregoing, it is recommended that the Department of Management Services, Division of State Group Insurance, enter a final order denying Petitioner, Detrick Murray, a refund of his accident/disability insurance coverage premiums paid in 2007 and 2008.

DONE AND ENTERED this 12th day of May, 2010, in
Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of May, 2010.

COPIES FURNISHED:

Sonja P. Mathews, Esquire
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399

Detrick Murray
4370 Northwest 187th Street
Miami, Florida 33055

John Brenneis, General Counsel
Division of State Group Insurance
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.