

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARY H. KING, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-1901  
 )  
 DEPARTMENT OF MANAGEMENT )  
 SERVICES, DIVISION OF )  
 STATE GROUP INSURANCE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on June 17, and August 15 and 30, 2011, via video teleconference with sites in Jacksonville and Tallahassee, Florida, before Barbara J. Staros, Administrative Law Judge, with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James C. Cumbie, Esquire  
Cumbie Law Firm  
Post Office Box 40066  
Jacksonville, Florida 32203

For Respondent: Sonia P. Mathews, Esquire  
Department of Management Services  
4050 Esplanade Way, Suite 160  
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

The issue presented for decision in this case is whether Petitioner's claim of additional life insurance benefits should be paid or denied.

PRELIMINARY STATEMENT

By letter dated March 7, 2011, the Department of Management Services, Division of State Group Insurance notified Petitioner, Mary H. King, that her claim for \$6,184.38 in additional life insurance benefits for William King was denied. The letter stated in part, "[s]pecifically, you requested that his life insurance benefit be changed from \$2,500 to \$10,000, based upon the claim that neither you nor Mr. King were informed of his options."

Petitioner requested a formal administrative hearing to contest the denial of benefits. On April 18, 2011, the Department forwarded the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge. The case was scheduled for hearing on June 17, 2011, and was commenced on that date. However, due to video teleconference technical difficulties, the remainder of the hearing was rescheduled, continued on August 15, and concluded on August 30, 2011.

At hearing, Mary King testified on behalf of her husband's estate. Petitioner's Exhibits numbered 1 through 8 were

admitted into evidence, with the exception of handwriting contained on Exhibit numbered 4. Respondent presented the testimony of Sandie Wade, Mike Waller, Laura Cutchen, James West, Robin Collins, Verla Lawson, and Janice Lowe.

Respondent's Exhibits numbered 1 through 46 and 48 were admitted into evidence. Respondent's Exhibit numbered 47 was proffered.

The hearing was not transcribed. Respondent filed a Motion to Extend Time for Filing Proposed Recommended Orders, which was granted. The parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order. References to statutes are to Florida Statutes (2010) unless otherwise noted.

#### FINDINGS OF FACT

1. The State of Florida Group Insurance Program (the Program) is a benefit available to State of Florida officers, employees, and retirees. The Division of State Group Insurance (DSGI) is an administrative unit located within the Department of Management Services. The life insurance policy at issue in these proceedings is part of the Program which is administered by DSGI.

2. At the time of his retirement, March 1, 1998, William King and his wife resided at 4159 Stratford Way, Jacksonville, Florida 32225 (the Stratford address.) Mr. and Mrs. King moved from the Stratford address in May 1999 to 12830 Muirfield

Boulevard N., Jacksonville, Florida 32225 (the Muirfield address.)

3. Mr. King died on September 25, 2010. At the time of his death, Mr. King was a retired state employee with life insurance coverage through the Program. At the time of his death, Mr. King resided at the Muirfield address.

4. Mary H. King is the widow of William King, and the named beneficiary to Mr. King's life insurance policy provided through the Program.

5. DMS has contracted with Northgate Arinso (Northgate), formerly Convergys, Inc., to provide human resources management services, including assisting in the administration of employee benefits. Northgate primarily performs these tasks through an on-line system known as "People First." People First became the system of record for DSGI benefits data, including addresses, on January 1, 2005. Prior to that, the system of record for DSGI was the COPES system. However, People First does not administer the State of Florida retirement pension program.

6. Prior to January 1, 2000, life insurance coverage for retirees was \$1,500, with a premium of \$4.20 per month. Effective January 1, 2000, the coverage for retirees was increased to \$10,000, and the premium continued to be \$4.20 per month.

7. The Open Enrollment Guide for Plan Year 2000 notified all current life insurance plan participants that they must re-enroll for the life insurance program, and that failure to do so would result in those retirees no longer receiving life insurance benefits.

8. Because the retirees' response to the 1999 Open Enrollment was poor, DSGI developed a letter dated November 10, 1999, to provide the retirees another chance to enroll, as opposed to their losing life insurance coverage as of January 1, 2000, due to lack of response.

9. By letter dated November 10, 1999, DSGI sent a letter to Mr. King notifying him of the above-referenced increase in retiree life insurance coverage from \$1,500 to \$10,000 effective January 1, 2000. The November 10, 1999 letter informed retirees that they had to complete a new enrollment form in order to continue retiree group life insurance coverage. This November 10, 1999 letter was addressed to the Muirfield address.

10. In this effort to get a better response to the reenrollment requirement, DSGI created a file with names and social security numbers and provided that to the Division of Retirement (DOR). DOR then provided DSGI with a disk containing the addresses for those persons from the DOR database. The November 10, 1999 letter, including the one sent to Mr. King, used the addresses furnished by DOR.

11. Although the DOR address database was used to mail the letter dated November 10, 1999, no change was made to the DSGI database (which, at that time, was COPES), for those retirees whose addresses were different in the DOR database. Later mailings by DSGI were to the addresses of record in the DSGI/COPES system.

12. A change of address notification card dated August 10, 1999, regarding Mr. King's change of address from the Stratford address to the Muirfield address is in evidence. It is not clear from the face of the change of address form as to whether this was sent to DSGI or to DOR.

13. Two months later, DSGI sent another letter to retirees informing them that they were enrolled in the life insurance plan but required them to submit an enclosed form to indicate a decision either to decline the coverage or to provide beneficiary coverage. This letter was dated January 12, 2000, and was mailed to the Stratford address, Mr. King's former address.

14. Several of Mr. King's State of Florida Statements of Retirement Benefit Payments are in evidence and reflect that the payment of \$4.20 was regularly deducted from Mr. King's monthly retirement benefit for State life insurance, including the monthly statement dated January 31, 2000. The monthly

retirement benefits statements were mailed to the Muirfield address by DOR.

15. Sandi Wade is a benefits administrator for DSGI. According to Ms. Wade, the cost of retiree life insurance was supplemented in the past with funds from a trust account, thereby reducing the premium charged to retirees.

16. In 2006, DSGI determined that the funds used to augment the retirees' benefits from years 2000 through 2007 would be depleted after 2007. DSGI then determined that the current life insurance premium of \$4.20 would support a benefit of \$2,500, and that the premium to continue \$10,000 of life insurance coverage would be \$35.79 per month. This resulted in a change in the life insurance options available to retired employees.

17. By letter dated July 31, 2006, DSGI informed retired state employees of this change in a letter which read in pertinent part:

Dear Retiree:

RE: State of Florida Life Insurance

\* \* \*

The upcoming annual open enrollment period will provide you with three (3) options regarding your life insurance coverage. You should carefully examine all options and the information provided in your Open Enrollment packet, which will be mailed prior to Open Enrollment, to decide which choice best suits your unique circumstances.

Effective January 1, 2007, the three (3) life insurance options available will be:

- A \$2,500 benefit for a monthly premium of \$4.20
- A \$10,000 benefit for a monthly premium of \$35.79
- Terminate life insurance coverage (precludes participants from re-enrolling for the product in the future.)

Consistent with our practice in previous years, should you not participate in the Open Enrollment process, or make no change to your life insurance election, you will continue to be enrolled with retiree life insurance coverage. Your default election will be the \$2,500 benefit, with its associated premium.

If there is a desire to modify your open enrollment life insurance election, requests for changes to your life insurance coverage enrollment will be accepted through Friday, January 19, 2007.

\* \* \*

This notice in advance of open enrollment is being provided in order that you will have additional time to consider all options available to you. Life insurance choices are important decisions.

18. Mike Waller, an employee of DSGI, maintains benefits data for People First/DSGI. In July 2006, Mr. Waller was asked to prepare a file containing the names and mailing addresses of all retirees who were covered by life insurance. He created a file used in a mail merge to send all retirees a copy of the July 31, 2006 letter.



19. In preparing the file containing the mailing addresses of retirees covered by life insurance in July 2006, Mr. Waller used the addresses of record from the benefits data he maintained.

20. In July 2006, the address of record in the DSGI database for Mr. King was the Stratford address, and was included in the mailing addresses file.

21. Mr. Waller prepared the file and on July 3, 2006, delivered it to Dick Barnum and Thomas Lockridge.

22. Thomas Lockridge delivered the file to Laura Cutchen, another employee of DSGI.

23. DSGI contracted with Pitney Bowes to mail the July 31, 2006 letter to 29,392 retired state employees.

24. After obtaining copies of the letter from the print shop of DSGI, Ms. Cutchen delivered the letters and the file containing names and addresses of retirees to Pitney Bowes to assemble. Pitney Bowes provided the envelopes, assembled the letters (inserting them in each of the 29,392 envelopes), and addressed the letters by ink jet.

25. The letters were delivered to the U.S. Post Office, accompanied by Ms. Cutchen. The State of Florida first class mailing permit had been applied to each envelope.

26. The July 31, 2006 letter was mailed to Mr. King at the Stratford address.

27. The return address on the envelope containing the July 31, 2006 letter was DSGI, 4050 Esplanade Way, Suite 215, Tallahassee, Florida 32399-0949.

28. Janice Lowe is employed by DSGI and has been for over 32 years. Her duties include assisting retirees with insurance issues. According to Ms. Lowe, DSGI received numerous returned letters as undeliverable. These undeliverable letters were processed by Ms. Lowe. If the returned envelope showed a different address on a yellow sticker applied by the U.S. Postal Service, the letter was re-mailed to that address.

29. However, if the returned envelope did not provide a different address, DSGI accessed the DOR database to determine whether there was another address for the retiree to whom the returned letter was addressed. Each time a name was accessed on the DOR system, DSGI printed that Retirement Benefit Information screen showing the address in the DOR database. If the address in the DOR database was different from the address in the DSGI database, the original envelope and letter were placed in another envelope and mailed to the retiree at the address from the DOR database.

30. A copy of each retirement print screen that was accessed by Ms. Lowe was printed and inserted alphabetically into binders.

31. The presence of a DOR print screen indicates that the initial letter was returned as undeliverable and processed as described above.

32. From each retirement screen that was accessed, Ms. Lowe typed the name of the retiree and DOR address in a format used for address labels. Once she had typed a full page of names and addresses, she printed those onto mailing labels and put the new labels on envelopes. She then placed the July 31, 2006 letter and original envelope that had been returned into the new envelope bearing the newly created address label.

33. There is a DOR print screen for Mr. King, thereby indicating that the letter to him dated July 31, 2006, and mailed to the Stratford address, had been returned to DSGI, and was processed as described above.

34. Ms. Lowe re-mailed the July 31, 2006 letter to Mr. King at the Muirfield address on or about October 13, 2006. A copy of the address label used to mail this to Mr. King is in evidence. This label reflects the Muirfield address.

35. The letters mailed by Ms. Lowe were mailed first class. The return address printed on the envelopes was the State of Florida, Division of State Group Insurance, P.O. Box 5450, Tallahassee, Florida 32314-5450.

36. When one of the letters as prepared and mailed by Ms. Lowe was returned to DSGI, Ms. Lowe stapled the letter to the DOR print screen for that retiree.

37. The retirement print screen that Ms. Lowe printed for Ms. King does not contain a letter that was returned, indicating that the envelope with the Muirfield address, mailed in October 2006, was not returned to DSGI as undeliverable.

38. Although Ms. Lowe re-mailed the letter using the Muirfield address, she did not change Mr. King's address in the DSGI database, and does not have access that would allow her to do so.

39. Prior to Convergys assuming responsibility for the administration of benefits, DSGI maintained benefits information in the COPES system. When Convergys assumed responsibility for the management of benefits on January 1, 2005, the benefits information from COPES was imported into the Convergys/People First system.

40. For reasons that are not entirely clear, People First and DOR do not share databases and each maintains its own database of names and addresses. This results in two divisions (DSGI and DOR) of the same state agency (DMS) using different databases.

41. Each year, DSGI holds an open enrollment period as required by section 110.123(3)(h)5., Florida Statutes. Open

enrollment is that period of time once a year, as identified by DSGI, during which participants in the state group insurance programs, including retirees, may change, add, or cancel participation in the insurance plans offered.

42. Prior to open enrollment, DSGI mails to each employee and retiree participating in the state group insurance program a package that explains the benefits and options that are available for the next year.

43. There is a copy of correspondence from DSGI addressed to Mr. King regarding open enrollment for 2001. This correspondence was mailed to Mr. King at the newer Muirfield address. It states in part, "The Annual Enrollment Period begins on September 11, 2000 and ends on October 11, 2000." This correspondence contained a copy of a return postcard addressed to DSGI and also contained the statement "Detach this postcard and mail to DSGI by 9-22-00 to obtain the desired information." It is unclear from the record how the Muirfield address was used at this point in time when the DSGI database still reflected the Stratford address for Mr. King.

44. DSGI maintains that its database reflected that the DSGI address of record for Mr. King was the Stratford address until February 8, 2011, after the death of Mr. King.

45. The 2006 Open Enrollment period for the 2007 plan year ran from September 19, 2006, through October 18, 2006.

46. During Open Enrollment for Plan Year 2007, the People First Service Center was charged with the responsibility of sending open enrollment packages to State of Florida employees and retirees. The Open Enrollment packages for Plan Year 2007 were mailed by People First using the U.S. Postal Service.

47. People First mailed Mr. King's Open Enrollment 2007 package on September 3, 2006, to the older Stratford address.

48. The Open Enrollment package mailed to Mr. King on September 3, 2006, contained Mr. King's 2007 Benefits Statement; a letter from John Mathews, former Director of DSGI; Information of Note; a Privacy Notice; and the 2007 Benefits Guide.

49. The 2006 Open Enrollment package for year 2007 also included a document entitled, "State Group Insurance Program-Information of Note" which reads in pertinent part:

RETIREE LIFE INSURANCE

For Plan Year 2007, those currently enrolled with retiree life insurance may elect to retain the current \$4.20 premium for a benefit of \$2,500, retain the current benefit of \$10,000 for a premium of \$35.79, or cancel coverage. If no change is made during open enrollment, participation will continue at the \$4.20 premium level.

50. Prior to the benefits change effective January 1, 2007, Mr. King paid a monthly premium of \$4.20 for \$10,000 in life insurance coverage. This amount was deducted from his retirement benefit monthly payment. This amount continued to be

deducted from his retirement benefits following the change in January 2007 until December 2007 when the amount deducted increased to \$7.41.

51. In any event, no election to pay the increased premium of \$35.79 was received by DSGI for Mr. King. This is not surprising since Mr. King did not receive the Open Enrollment package informing him of the right to make this election as it was mailed to the Stratford address.

52. For those retirees who did not make a timely election pursuant to the Open Enrollment notice sent in 2006 for Plan Year 2007, the death benefit automatically became \$2,500, effective January 1, 2007, for the monthly premium of \$4.20.

53. Throughout the years, the Benefits Guides and newsletters sent from DSGI have informed program participants of their responsibility to maintain current addresses with DSGI, including reminders to notify both DOR and DSGI in writing if there was an address change.

54. Neither DSGI nor DOR notifies the other of receipt of address change. A change of address of one division of DMS does not automatically change the address in another as the two divisions have separate databases.

55. While it is beyond the scope of this proceeding to evaluate the fact that these two divisions of the same state agency do not share databases, it is noted that DOR serves a

larger population of persons. That is, the database of the DOR consists of all retirees that participate in the Florida Retirement System, including retirees of various local government agencies and educational entities.

56. Deductions were made monthly for state life insurance premiums until Mr. King's death in September 2010. No evidence demonstrated that Mr. King informed DSGI in any way that he desired to maintain his \$10,000 life insurance benefit.

#### CONCLUSIONS OF LAW

57. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to section 120.57(1), Florida Statutes.

58. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Fla. Dep't of Transp. v. J.W.C. Corp., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). Accordingly, Petitioner bears the burden of proof in this proceeding by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

59. DSGI and DOR are divisions established by statute within DMS. § 20.22(2), Fla. Stat. DSGI is the entity charged with administering the state group insurance program. § 110.123(3) and (5), Fla. Stat. No other agency is given authority to act regarding state insurance benefits.



60. DOR, while also a division of DMS, administers the Florida Retirement System pursuant to the provisions of chapter 121, Florida Statutes.

61. There is nothing in the statutes governing these entities or the rules implementing them which would require DSGI and DOR to share databases.

62. As provided in section 110.123(4)(f), the state cannot increase the insurance premium deducted from retirement warrants unless requested by the retiree. As provided in section 110.123(4)(e), the state cannot contribute to the premium paid by retirees that participate in the state insurance program.

63. While there is no evidence that Mr. King elected to reduce his coverage, there is also no evidence that he elected to maintain the \$10,000 by agreeing to pay the increased premium.

64. It is presumed that mail properly addressed, stamped and mailed was received by the addressee. Berwick v. Prudential Prop. and Cas. Ins. Co., 436 So. 2d 239 (Fla. 3d DCA 1983). Proof of mailing of a document to the correct address creates a presumption that the item mailed was received. W.T. Holding, Inc., v. Ag. for Health Care Admin., 682 So. 2d 1224 (Fla. 4th DCA 1996). This presumption is a rebuttable one. Id.; Scutieri v. Miller, 584 So. 2d 897, 900 (Fla. 3rd DCA 1991). A denial of receipt does not automatically overcome the presumption of

receipt but creates a question of fact for the trier of fact.

W.T. Holding v. Ag. for Health Care Admin., supra.

65. The question becomes, did DSGI send the pertinent information to the correct address? Clearly, Mr. King had moved from the Stratford address. There is evidence that he notified someone of this address change, but no competent evidence that this notification went to DSGI. The November 1999 and October 2006 mailings used the Muirfield address, which DSGI obtained from DOR in those instances. The DSGI database was not updated with the address furnished by DOR, which clearly had the newer Muirfield address. The DSGI database contained the Stratford address until Mr. King's death in 2010.

66. Applying the analysis supplied by case law, the evidence presented by Petitioner is not sufficient to rebut the presumption established by Respondent. Respondent's evidence established that DSGI mailed the pertinent notices to Mr. King's address of record with DSGI. The evidence also established that DSGI personnel tracked all July 31, 2006, letters that were returned to DSGI, and that the letter mailed to Mr. King was returned. It then obtained the Muirfield address from DOR and remailed it in October 2006. This mailing to the Muirfield address, Mr. King's correct address, was not returned. Thus, based upon the above-referenced case law, this creates a presumption that it was received prior to the implementation of

the insurance premium change January 1, 2007. While the end result is harsh under the circumstances of this case, the undersigned is compelled to follow the applicable case law and does not have jurisdiction to grant equitable relief.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Management Services enter a Final Order denying Petitioner's request for an increase in life insurance benefits.

DONE AND ENTERED this 4th day of October, 2011, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of October, 2011.

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.