STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DONNA M. GOERNER,)
)
Petitioner,)
)
vs.) Case No. 11-2997
)
DEPARTMENT OF MANAGEMENT)
SERVICES,)
)
Respondent.)
_________________________________)

RECOMMENDED ORDER

Pursuant to notice, on August 30, 2011, a formal hearing in this cause was held by video teleconference in Orlando and Tallahassee, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

For Petitioner: Dean Andrew Reed, Esquire
Law Offices of Dean A. Reed, P.A.
2180 West State Road 434, Suite 2150
Longwood, Florida 32779

For Respondent: Sonja P. Mathews, Esquire
Offices of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to a refund of $1,256.09 for a COBRA premium payment made for the month of January 2011.

PRELIMINARY STATEMENT

Petitioner, Donna Goerner, last worked as an employee for the State of Florida on May 31, 2010. During her term of employment, Petitioner received health insurance coverage through the State Insurance Health Program (Health Program). United Healthcare of Florida, Inc. (United), during all times material hereto, served as Petitioner's Health Maintenance Organization (HMO) provider.

Under the Health Program, premiums are paid 30 days in advance of the month for which the payment covers. Upon termination of her employment with the State of Florida, Petitioner, as authorized by the Consolidated Omnibus Budget Reconciliation Act (COBRA), elected to continue her health insurance coverage. In accordance with her election, Petitioner, on July 1, 2010, commenced personally paying the monthly premiums associated with the continuation of her insurance coverage.

COBRA premium payments are due by the tenth day of the month prior to the month of coverage. Late premium payments are, however, accepted through the end of the coverage month. Petitioner submitted a late premium payment for the month of January 2011. The late payment was accepted by the Department of Management Services (Department), and Petitioner's health coverage was in effect for the entire month of January 2011.

However, in February 2011, Petitioner received erroneous correspondence from United informing her that her COBRA coverage ceased on December 31, 2010. In response to this correspondence, Petitioner requested reimbursement of her January 2011 COBRA premium payment. On February 28, 2011, the Department denied Petitioner's request. In response to the denial, Petitioner, on March 14, 2011, filed a request for a formal hearing as authorized by chapter 120, Florida Statutes (2010).[1/] On or about June 15, 2011, the Division referred the matter to the Division of Administrative Hearings for a disputed fact hearing.

A Notice of Hearing by Video Teleconference was issued setting the case for formal hearing on August 30, 2011. At the hearing held on August 30, 2011, Petitioner testified on her own behalf and offered the testimony of Mary Hutchinson, and Sandie Wade. The Department offered testimony from Sandie Wade, Michael Talbot, James T. West, and Mary N. Hutchinson.

Petitioner's Exhibits 1, 2, 3, 8, and 12 were offered and received into evidence without objection. Respondent's Exhibits 1, 4, 10, and 11 were offered and received into evidence without objection. Petitioner objected, on grounds of relevance, to Respondent's Exhibits 13 and 14. Both exhibits were received into evidence over objection.

On September 22, 2011, the parties filed a joint motion wherein it was requested that the date for filing proposed recommended orders be extended to October 10, 2011. The motion was granted. The transcript of the proceeding was filed with the Division of Administrative Hearings on October 3, 2011. On October 6, 2011, Petitioner submitted a Proposed Recommended Order; on October 10, 2011, Respondent submitted a Proposed Recommended Order. The Proposed Recommended Orders submitted by the parties have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The parties stipulate to the following facts set forth in this paragraph:

> A) Petitioner was employed by the State of Florida from June 19, 1995, through April 30, 2007, and again from November 7, 2007, through May 31, 2010;
>
> B) While a State of Florida employee, Petitioner participated in the Health Program. Employee Health Program premiums are paid a month in advance, so upon Petitioner's termination of employment on May 31, 2010, her Health Program coverage continued through June 30, 2010;
>
> C) Petitioner began "continuation coverage" on July 1, 2010;

D) Continuation coverage is health insurance coverage that is identical to the coverage provided under the Health Program to active employees and must be offered to qualifying employees and dependents in accordance with the COBRA. COBRA is applicable to public employment through amendments to the Public Health Services Act. 42 U.S.C. § 300bb-1 (2010);

E) Petitioner's COBRA premium payment for the month of January 2011 was received by the Department/Northgate Arinso on January 6, 2011;

F) After February 2, 2011, Petitioner received a letter from United dated February 2, 2011; and

G) Prior to receipt of the letter dated February 2, 2011, Petitioner had not requested cancellation of her COBRA coverage.

2. The Department serves as statutory administrator for the Health Program. § 110.123(5).

3. The company of Northgate Arinso, through contract with the Department, serves as the professional administrator of the Health Program. In the capacity of professional administrator, Northgate Arinso is responsible for overseeing most of the day-to-day operations associated with the Health Program. Northgate Arinso is one of the many companies that make up what is commonly referred to as People First.

4. Pursuant to its contract with the Department, Northgate Arinso is responsible for, among other things, receiving and processing payments from insured individuals and making initial determinations regarding whether individuals are eligible for COBRA continuation coverage. The Department, however, makes all final decisions "concerning enrollment, the existence of coverage, or covered benefits" and is prohibited, by statute, from delegating such final authority to others. § 110.123(5).

5. United has a contract with the Department to provide health insurance coverage for eligible State of Florida employees and individuals, like Petitioner, who are covered through COBRA. United is Petitioner's HMO.

6. The contract between United and the Department provides, in relevant part, that "[b]y the tenth (10th) day of each calendar month of service, People First will forward monthly enrollment change data in an electronic media format. The data layout of the monthly HMO eligibility file structure will be provided by People First." United does not make final Health Program coverage eligibility determinations for employees, their dependents, or COBRA-covered individuals.

7. Petitioner's COBRA premium payment for the month of January 2011 was due by December 10, 2010. Petitioner mailed her premium payment in the amount of $1,256.09 to People First on January 3, 2011. Included with Petitioner's payment was a

note written by Petitioner stating "[p]lease reinstate policy coverage for January."

8. Premium payments for direct bill participants, like Petitioner, are mailed to a lock-box, the contents of which are forwarded nightly to Northgate Arinso for processing. Upon receipt of a premium payment, Northgate Arinso verifies the amount of the payment and confirms that the participant continues to otherwise meet COBRA eligibility requirements. On the fifth day of each month, the People First system automatically checks to see if premium payments have been received and processed during the previous month. Petitioner's premium payment due for the month of January 2011 was not received by People First until January 6, 2011, so this payment would not have been captured by the system during the January 5, 2011, processing cycle.

9. On the 27th or 28th day of each month, Northgate Arinso forwards to vendors, such as United, premium payments received from program participants. Because Petitioner's January premium was not received until January 6, 2011, no premium payments for January 2011 coverage would have been reflected on the December 27 or 28, 2010, transmittal, as appropriate, from Northgate Arinso to United. However, Petitioner's January 2011 premium payment should have been reflected on the January 27 or 28, 2011, transmittal from Northgate Arinso to United, but,

for reasons unexplained, it was not. Northgate Arinso's failure to reflect Petitioner's January 6, 2011, premium payment on the January 27 or 28, 2011, transmittal to United resulted in United sending to Petitioner a certificate of creditable coverage.

10. On February 2, 2011, United, after having received from Northgate Arinso information which indicated that Petitioner had not paid her January 2011 premium (when in fact she had), sent Petitioner a certificate of creditable coverage, which reads as follows:

> IMPORTANT TERMINATION OF COVERAGE NOTICE
> FOR: DONNA GOERNER, WILLIAM GOERNER
>
> PLEASE READ THIS CERTIFICATE OF CREDITABLE COVERAGE LETTER CAREFULLY AND SAVE IT FOR YOUR RECORDS. YOU WILL NEED THIS INFORMATION TO ENROLL IN ANOTHER BENEFIT PLAN.
>
> WE ARE WRITING TO LET YOU KNOW THAT YOUR HEALTH CARE COVERAGE WITH UNITEDHEALTHCARE HAS ENDED. THIS LETTER IS YOUR "CERTIFICATE OF CREDITABLE COVERAGE" THAT VERIFIES YOUR PRIOR COVERAGE WITH ONE OR MORE OF UNITEDHEALTHCARE AFFILIATED COMPANIES PROVIDING INSURANCE, HMO OR CLAIMS ADMINISTRATION SERVICES (COLLECTIVELY REFERRED TO AS UNITEDHEALTHCARE).
>
> WHEN ENROLLING IN ANOTHER PLAN, YOU WILL NEED THIS CERTIFICATE TO SHOW YOU HAVE HAD CONTINUOUS COVERAGE. IF NEEDED, PROVIDE THIS LETTER AND/OR ANY OTHER UNITEDHEALTHCARE COVERAGE DOCUMENTS TO YOUR NEW PLAN ADMINISTRATOR OR EMPLOYER. PLEASE BE AWARE THAT CERTAIN INFORMATION MAY NOT BE CURRENTLY AVAILABLE FROM UNITEDHEALTHCARE. IF YOUR NEW HEALTH BENEFIT PLAN REQUIRES INFORMATION THAT IS NOT CONTAINED IN THIS

> CERTIFICATE, YOU MAY PROVIDE THE INFORMATION IN WRITING TO YOUR NEW PLAN, ALONG WITH SUPPORTING COVERAGE DOCUMENTS OR BY OTHER MEANS.
>
> THE INFORMATION BELOW DESCRIBES THE COVERAGE AMOUNT AND THE DATE IT ENDED. AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, BETTER KNOWN AS HIPAA, WE ACKNOWLEDGE THAT THE FOLLOWING INDIVIDUAL(S) PARTICIPATED IN A UNITEDHEALTHCARE HEALTH BENEFIT PLAN:
>
> DONNA GOERNER--COVERAGE PERIOD END DATE--12/31/10
> WILLIAM GOERNER--COVERAGE PERIOD END DATE--12/31/10
>
> IF YOU HAVE QUESTIONS ABOUT THIS LETTER, OR BELIEVE ANY INFORMATION CONTAINED IN THIS LETTER IS NOT ACCURATE, YOU MAY CONTACT THE BENEFIT REPRESENTATIVE OF YOUR PREVIOUS EMPLOYER, CALL CUSTOMER CARE AT 1-866-527-9597 OR AT THE NUMBER LISTED ON YOUR MEMBER ID CARD. THANK YOU.
>
> SINCERELY,
>
> UNITEDHEALTHCARE

11. Upon receipt of the certificate of creditable coverage, Petitioner reasonably believed that her COBRA coverage had been cancelled effective December 31, 2010.

12. The certificate of credible coverage is not a letter which determines participant eligibility, but instead provides the recipient thereof with information verifying dates of COBRA coverage.

13. On February 7, 2011, Petitioner, upon receipt of the certificate of creditable coverage letter, contacted Northgate

Arinso and requested reimbursement of her January 2011 premium payment. Petitioner's request was denied.

14. For the month of January 2011 there were no claims submitted to the Department or Northgate Arinso by healthcare providers seeking payment for services provided to Petitioner or any of her beneficiaries.

15. By signature affixed on July 1, 2010, Petitioner acknowledged receiving a benefits packet which contained "IMPORTANT INFORMATION ABOUT [HER] COBRA CONTINUATION COVERAGE RIGHTS." Among other things, the benefits packet noted the following:

> HOW LONG WILL CONTINUATION COVERAGE LAST?
>
> In the case of a loss of coverage due to end of employment, coverage may be continued for up to 18 months. . . . Continuation coverage will be terminated before the end of the maximum period if any required premium is not paid on time, if a qualified beneficiary becomes covered under another group health plan that does not impose any pre-existing condition exclusion for a pre-existing condition of the qualified beneficiary, if a covered employee enrolls in Medicare, or if the employer ceases to provide any group health plan for its employees. Continuation coverage may also be terminated for any reason the Plan would terminate coverage of participant or beneficiary not receiving continuation coverage (such as fraud).

* * *

> WHEN AND HOW MUST PAYMENT FOR CONTINUATION COVERAGE BE MADE
>
> **Periodic payments for continuation coverage:** After you make your first payment for continuation coverage, you will be required to pay for continuation coverage for each subsequent month of coverage. Under the Plan, these periodic payments for continuation coverage are due on the 10th day of the month prior to the coverage month.
>
> **Grace periods for periodic payments:** Although periodic payments are due on the 10th day of the month prior to the coverage month, you will be given a grace period of through the end of the coverage month to make each periodic payment. Your continuation coverage will be provided for each coverage period as long as payment for that coverage period is made before the end of the grace period for that payment. However, if you pay a periodic payment later than its due date but during its grace period, your coverage under the Plan may be suspended and then retroactively reinstated when the periodic payment is made. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.
>
> If you fail to make a periodic payment before the end of the grace period for that payment, you will lose all rights to continuation coverage under the Plan. (Emphasis in original).

16. On July 7, 2010, Petitioner, within days of commencing continuation coverage, received from the People First Service

Center, Benefits Administration, correspondence which, in part, provides as follows:

> Your monthly insurance premium(s) are due by the 10th of the month prior to the month of coverage to avoid interruption of services. Premiums must be received or postmarked by the end of the coverage month to prevent termination.
>
> * * *
>
> <u>State Group Health Insurance Program and Supplemental Insurance Plans</u>
>
> Receipt of direct payment, endorsement, or deposit of premium by the Department or its agent does not provide coverage if after receipt of the payment, its endorsement, or deposit, the Department or its agent determines that the employee, retiree, or COBRA participant or dependent is not eligible to participate in the State Group Health Program or Supplemental Insurance Plan(s). Upon determination of ineligibility, including failure to make timely payments, the premium received shall be fully reimbursed.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2011).

18. Petitioner bears the burden of establishing by a preponderance of the evidence her entitlement to reimbursement of her January 2011 COBRA premium payment. <u>See</u> <u>Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern and Co.</u>, 670 So. 2d 932, 934 (Fla. 1996); <u>Young v. Dep't of Cmty. Aff.</u>,

625 So. 2d 831, 834 (Fla. 1993); Espinoza v. Dep't of Bus. & Prof'l Reg., 739 So. 2d 1250, 1251 (Fla. 3d DCA 1999); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); and § 120.57(1)(j)("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute. . . .").

19. A preponderance of the evidence is defined as "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

20. Florida Administrative Code Rule 60P-2.004(9) provides as follows:

> Receipt of direct payment, endorsement, or deposit of premium by the Department or its agent does not provide coverage if after receipt of the payment, its endorsement, or deposit, the Department or its agent determines that the employee, retiree, or COBRA participant or dependent is not eligible to participate in the State Group Health Program. Upon determination of ineligibility, including failure to make timely payment, the premium received shall be fully reimbursed.

21. Rule 60P-2.006(5) provides that "[a] late payment from . . . an insured having continuation coverage will be accepted as a late payment if it is received by the Department on or before the last day of the coverage month; however,

payment will not be accepted after such date and coverage will be terminated." (Emphasis added). The requirements set forth in rule 60P-2.006(5) are consistent with the law governing COBRA continuation benefits and the explanation of COBRA benefits that Petitioner acknowledged receiving on July 1, 2010.

22. Rule 60P-2.015(1) provides that "[c]overage under the Health Program shall continue through the last day of the month for which a premium has been paid."

23. Although Petitioner paid her January 2011 premium after the date upon which it was due, she nevertheless made the premium payment during the applicable grace period. Petitioner was, therefore, timely in the submission of her January 2011 premium payment. Northgate Arinso, in accordance with rule 60P-2.006(5), accepted Petitioner's payment and, per the requirements of rule 60P-2.015(1), continued her coverage through the end of January 2011. Succinctly stated, it is the "receipt" of payment by Northgate Arinso, as opposed to the "processing" of the same, that drives the analysis in this case. See Nationwide Mut. Fire Ins. Co. v. Smith, 28 So. 3d 943 (Fla. 1st DCA 2010) (Insured's premium payment was deemed received by insurer when funds were electronically transferred to insurer's bank as opposed to when the funds were placed in the insurer's account by the bank).

24. As previously noted, rule 60P-2.004(9) provides, in part, that upon a determination of ineligibility, any premium payments received by the Department or its agent for a coverage period subsequent to the determination shall be fully reimbursed. Petitioner contends in her proposed recommended order that Northgate Arinso determined that she was ineligible to participate in the Health Program when the company failed to timely inform United that she had paid her January 2011 premium. The undersigned finds this argument unpersuasive. The mere fact that Northgate Arinso erroneously communicated to United that it had not received Petitioner's January 2011 payment, when in fact it had, does not change the undisputed fact that Petitioner's January 2011 payment was actually received and accepted by Northgate Arinso on January 6, 2011.

25. It is clear that Northgate Arinso dropped the proverbial ball when it omitted Petitioner's payment information from the list identifying individuals that had paid their January 2011 Health Program premium. However, Northgate Arinso's failure in this regard does not equate to a determination that Petitioner was deemed ineligible for continuation of COBRA benefits and thus entitled to a refund of her premium. Notions of estoppel notwithstanding, it is well established "that a party shall not take advantage of an error for his [or her] benefit. . . ." Hale v. Crowell's Adm'x,

2 Fla. 534, 538 (Fla. 1849). To find otherwise in the instant case, would amount to allowing Petitioner to execute the quintessential "gotcha" by using Northgate Arinso's error to secure a premium refund for a period of time that had already elapsed and for which Petitioner had no personal financial risk.[2/]

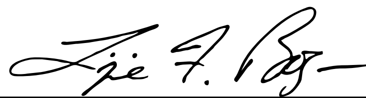
26. Accordingly, Petitioner has failed to meet her burden of proof and is, therefore, not entitled to a refund of her January 2011 COBRA premium payment.

RECOMMENDATION

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

RECOMMENDED that Respondent, Department of Management Services, enter a final order denying Petitioner, Donna M. Goerner's, request for reimbursement of her January 2011 COBRA premium payment.

DONE AND ENTERED this 20th day of October, 2011, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
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 20th day of October, 2011.

ENDNOTES

[1/] Unless otherwise noted, all references to Florida Statutes are to the 2010 edition.

[2/] As noted in the Findings of Fact, paragraph 14, neither Petitioner, nor her beneficiaries, for the month of January 2011, received medical services for which payment was sought from the Department or Northgate Arinso.

COPIES FURNISHED:

Jason Dimitris, General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

Sonja P. Mathews, Esquire
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

Dean Andrew Reed, Esquire
Law Office of Dean A. Reed, P.A.
2180 West State Road 434, Suite 2150
Longwood, Florida 32779

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.