

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN ISAACS,)
)
 Petitioner,)
)
 vs.) Case No. 11-3961
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes,¹ before Administrative Law Judge Jessica Varn of the Division of Administrative Hearings (DOAH). The hearing was held on October 19, 2011, by telephone conference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: John Isaacs, pro se
13021 S.W. 116th Street
Miami, Florida 33186

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

STATEMENT OF THE ISSUE

Whether Petitioner should receive a refund for an alleged overpayment of dental insurance premiums.

PRELIMINARY STATEMENT

By letter dated April 18, 2011, the Department of Management Services (Department) advised John Isaacs (Isaacs) of its denial of his request for a retroactive change to his dental coverage, and for reimbursement for an overpayment of dental insurance premiums.

On or about April 27, 2011, Isaacs filed a letter requesting a formal hearing. The matter was referred to DOAH on August 5, 2011, for the assignment of an administrative law judge to conduct a formal hearing and to submit a Recommended Order to the Department.

Pursuant to notice, the final hearing in this case was conducted on October 19, 2011. At the hearing, Isaacs offered Exhibits 1-3, and testified on his own behalf. The Department offered the testimony of James West and Sandy Wade; Respondent's Exhibits 1-14, and 6B, were admitted into evidence. By request of the Department, and over Isaac's objection, the undersigned took Official Recognition of a Senate Staff Analysis and Economic Impact Statement of CS/SB 1814, House of Representatives Staff Analysis and Economic Impact Statement of CS/HB 3123 (April 27, 1990), House of Representatives Staff Analysis and Economic Impact Statement of CS/HB 3123 (June 22, 1990), and section 110.123(4), Florida Statutes.

No transcript of the proceeding was filed with DOAH.

Isaacs did not file a post-hearing submission. Over objection, the Department requested and received an extension of time in which to file its Proposed Findings of Fact and Conclusions of Law, which was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Division of State Group Insurance (Division) is the executive agency within the Department of Management Services (Department) that is responsible for the administration of the State Group Insurance Program (Program).

2. Isaacs was first employed with the State of Florida in 1993, and remained employed with the State until March 2011, when he retired.

3. According to Isaacs, when he originally signed up for dental insurance, there were only two options available for employees; an employee could sign up either for "employee" coverage or for "employee plus family" coverage. Isaacs chose "employee plus family" dental coverage, so that he and his spouse would have coverage.

4. During his tenure as a State employee, Isaacs was married and had no children.

5. At all times material to the instant case, Isaacs resided, and received his mail, at 13021 S.W. 116th Street, Miami, Florida, 33186.

6. On January 1, 2005, the State of Florida started using an online system called "People First" to manage State of Florida employee payroll and benefit packages. Every employee and retiree was given a username and password to access the online system. Each employee's payroll information, leave balances, and benefits information could be seen online.

7. Pursuant to section 110.123(3)(h), every year there is a finite period of time during which State employees can sign up for benefit plans, or change their existing benefit plans, for the upcoming calendar year. This period is called "open enrollment."

8. Prior to open enrollment every year, People First mails out, to every State employee, a package which contains a personalized benefits statement and a Benefits Guide, which contains information as to all the benefit plans that are being offered for the upcoming calendar year. The benefits statement informs employees of the benefits they currently have and will continue to have during the upcoming calendar year, unless they make changes to their insurance or coverage level.

9. On September 7, 2007, the Division mailed each participant in the dental insurance program a letter explaining significant changes to the dental program.

10. This letter was mailed by first class mail to the address of record for each employee who was then enrolled in the

dental program. Isaacs' address of record in People First was his mailing address: 13021 S.W. 116th Street, Miami, Florida, 33186. Isaacs claims that he never received this letter. The undersigned finds this testimony to not be credible, given that Isaacs' address has not changed in 33 years, and he was unaware of any other problems with delivery to this address.

11. The September 2007 letter advised employees that there would be new coverage levels offered in 2008. It stated, in pertinent part:

There will be new coverage levels offered in 2008. You may currently be enrolled in a coverage level that will not be offered. The new coverage levels are:

- Employee Only
- Employee + Spouse
- Employee + Child(ren)
- Family

You will have the opportunity during the upcoming Open Enrollment to cancel coverage, change your coverage level, or switch to another dental plan. Any change you make will be effective on January 1, 2008. **If you take no action, your dental coverage may be changed automatically for 2008. If you are currently enrolled in a coverage level that will not be offered in 2008, you will be enrolled in Family coverage.**

12. People First sent Isaacs open enrollment packages in 2007, 2008, 2009, and 2010. The 2008 package, sent on September 17, 2007, included a Benefits Guide which contained all the information as to the change in the dental insurance

program. Employees were placed on notice that except for employees who had previously been enrolled for "Employee" coverage, all coverage levels would be moved to "Family" coverage unless the employees made changes during open enrollment. The package included instructions on how to make the coverage changes, and how to verify that those changes had been properly made.

13. Isaacs never changed his dental plan coverage; therefore, he was defaulted to the "Family" coverage as of January 1, 2008. Due to his failure to act, he remained in that coverage until he retired.

14. The open enrollment packages sent to Isaacs for years 2009, 2010, and 2011 included information as to the dental coverage tiers, and a personalized Benefits Statement which indicated which benefit plans Isaacs was enrolled in, and his coverage level. Every year, he could have made changes to his dental insurance coverage, but failed to do so.

15. As of People First going "live" in 2005, all State employees could review their benefits and coverage levels online. Thus, Isaacs, on his state-issued desktop computer, had access to People First, and could have reviewed his coverage levels and benefit plans.

16. Isaacs admitted at hearing that he did not review the open enrollment packages he received every year because he was

under the impression, based on advice he was given, that he need not review the information if he was not making any changes to his coverage levels or benefit plans. He added that he was not sure if he even opened all the open enrollment packages that were sent through the years.

17. Isaacs had the responsibility to open, review, and carefully read the open enrollment packages and all correspondence sent to him by his employer.

18. Isaacs was advised of the changes to the dental plan, but did not review the information sent to him. He had ample notice of the change to the dental plan coverage levels, but failed to review the information, and failed to avail himself of the many opportunities he had to adjust the coverage level. He paid for more coverage than he needed because he ignored all the information sent to him, which gave him specific instructions on how to avoid that exact circumstance.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to sections 120.569 and 120.57(1), Florida Statutes.

20. Isaacs, as Petitioner, has the burden of establishing by a preponderance of the evidence that he is entitled to a refund for the dental insurance premiums he overpaid. Florida

Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

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

22. Proof of mailing raises a rebuttable presumption that mail was received. Such a presumption only arises where there is proof that the mail was sent to the correct address. Brown v. Giffen Indus., Inc., 281 So. 2d 897, 900 (Fla. 1973); Star Lakes Estates Assoc'n, Inc. v. Auerbach, 656 So. 2d 271 (Fla. 3d DCA 1995).

23. In the instant case, the evidence established that all mailings to Isaac were sent to his address of record, which had not changed in over 30 years. Isaacs offered no credible evidence to rebut the presumption that the September 2007 letter was received, or that the open enrollment packages were received every year.

24. All of the mailings contained ample notice of the changes to the dental insurance plan, and the consequences of inaction. If Isaacs had reviewed the September 2007 letter, or the annual benefit statements, or the annual Benefits Guides, he could have averted any overpayment of premiums.

25. Isaacs failed to prove by a preponderance of the evidence that he is entitled to a refund for his overpayment of dental insurance premiums.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Department of Management Services enter an order denying Isaacs' request for a refund for his overpayment of dental insurance premiums.

DONE AND ENTERED this 15th day of November, 2011, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of November, 2011.

ENDNOTE

^{1/} Unless otherwise noted, all references in this Recommended Order to Florida Statutes are to Florida Statutes (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.