

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARISON DURAN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 12-2259  
 )  
 DEPARTMENT OF MANAGEMENT )  
 SERVICES, DIVISION OF STATE )  
 GROUP INSURANCE, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held in this case on September 13, 2012, by video teleconference between sites in Tallahassee and Lauderdale Lakes, Florida, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Marisol Duran, pro se  
5628 Taylor Street, Apartment B  
Hollywood, Florida 33021

For Respondent: Allison H. Deison, Esquire  
Department of Management Services  
Office of the General Counsel  
4050 Esplanade Way  
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner is entitled to prospective enrollment in the State Group Insurance Program.

PRELIMINARY STATEMENT

In a letter dated March 27, 2012, Respondent notified Petitioner that it had rejected her request to enroll in the State Group Insurance Program. In relevant part, the correspondence provided:

I am writing to let you know that the Division of State Group Insurance (DSGI) has made a determination regarding your Level II Appeal. You stated that you attempted to enroll in the health insurance program during your 60-day new hire window and the elections were not accepted. Consequently, you would like to enroll now.

In response to your appeal, we requested detailed information and records from People first, including call notes. We reviewed those call notes and other documentation, including system logs.

Chapter 60P, Florida Administrative Code, governs the State Group Insurance Program. These rules limit our ability to allow enrollment or coverage changes. Specifically, Chapter 60P-2 states that an employee may apply for enrollment during the first 60 days of employment and may then elect, change, or cancel coverage within 31 days of a QSC event . . . if the change is consistent with that event, or during the open enrollment period.

On November 24, 2011, People First mailed a New Hire package to your address of record. This package identified that you had 60 days from your date of hire to make any changes. On December 23, 2011, People First mailed a 30-day reminder to you that you had not made any elections. The first call to the service center regarding your benefits was January 26, 2012, six days past your enrolment window.

After carefully reviewing you appeal documents, we must unfortunately deny your Level II Appeal. You missed your new hire window and you do not have a QSC event that allows you to enroll in coverage.

Dissatisfied with Respondent's decision, Petitioner timely requested a formal administrative hearing. Subsequently, on June 26, 2012, Respondent referred the matter to the Division of Administrative Hearings ("DOAH") to assign an administrative law judge to conduct the final hearing.

As noted above, the final hearing was held on September 13, 2012, during which Petitioner testified on her own behalf and called one other witness, Sonia Carrasco. Without objection, the undersigned took judicial notice of the attachments to Petitioner's Level II appeal, copies of which were included in Respondent's referral to DOAH and made part of the case file. Respondent presented the testimony of James West, Jimmy Cox, Sandie Wade, and Lauren Palumbo, and introduced 13 exhibits, numbered 2-14. At the conclusion of the proceeding, the undersigned granted Respondent's request to extend the deadline for the submission of proposed recommended orders to September 27, 2012.

Although a court reporter was present during the final hearing, no transcript of the proceedings was ordered. Both parties timely submitted proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. In or around May 2010, the Florida Department of Economic Opportunity hired Petitioner as an "Other Personal Services Employment" ("OPS") worker—a category of state employee that that is not entitled to benefits, and, as a consequence, does not participate in the State Group Insurance Program.

2. Petitioner's entitlement to benefits changed, however, on November 22, 2011, when she was promoted to deputy clerk, which is a career service position. At or around that time, Petitioner was informed that she had 60 days from the effective date of her promotion to enroll in any benefit plan for which she was eligible.

3. Benefits, including insurance plans, are administered by a private contractor, NorthgateArinso, through an online system called "People First."

4. Following her promotion, Petitioner, with the assistance of her supervisor, investigated the benefit plans available to her by accessing the "My Benefits" pages at [www.myflorida.com](http://www.myflorida.com).

5. Subsequently, on December 13, 2011, Petitioner logged on to the People First system with the intent to make her benefit elections and complete her enrollment.<sup>1/</sup> Upon entering the website, Petitioner properly clicked on the tab labeled "Health & Insurance," which took her to the "Health & Insurance

Home Page." At that point, Petitioner was presented with eight icons from which to choose:

**General Benefits Information**

Go to the MyBenefits website for your insurance options.

**Your Benefits**

Review your benefits and Flexible Spending Accounts.

**Insurance Companies**

See contact information.

**Your Dependents' Information**

View and update dependents' information.

**Benefits Choices**

Enroll or change your benefits.

**Benefit Premium History**

Review your insurance.

**Required Documentation**

Review status of your documentation.

**Benefits Materials**

View and request insurance forms and booklets.

6. Of the foregoing options, Petitioner correctly selected "Benefits Choices," at which point she was navigated to a page that offered her the ability to register any eligible dependents. Not wishing to add any dependents, Petitioner selected the "Go to Next Step" button, which, in turn, took her to a page that listed "Current Plans." (As Petitioner had not previously made any elections, no health, vision, or dental plans were listed below the tab labeled "Current Plans").

7. Immediately adjacent to "Current Plans" were eleven other tabs: Health; Flex Spend Acct; Basic Life; Optional Life; Dental; Vision; Accident; Cancer; Disability; Intensive Care; and Hospitalization. From these options, Petitioner first selected "Health," which brought up a list of available health insurance plans.

8. At that point, Petitioner chose the box next to the Coventry Health Care individual health insurance plan. Significantly, however, this action did not finalize Petitioner's selection (as explained shortly, no choices are processed until an employee clicks, on a subsequent web page, the "complete enrollment" button).

9. After choosing—but not finalizing—her health insurance coverage, Petitioner clicked on the "Dental" tab. Although the undersigned credits Petitioner's testimony that she selected the box next to one of the available options, there is an absence of evidence concerning the identity of the plan in which she sought to enroll.<sup>2/</sup>

10. Next, Petitioner chose the "Vision" tab, which, similar to the "Health" and "Dental" screens, produced a list of available plans. Of the various choices, Petitioner clicked on the box next to the Coventry Health Care individual vision plan.

11. Significantly, and as alluded to above, benefit elections are not finalized in the People First system until two

actions are taken: first, the rectangle labeled "Summary/Last Step" must be selected, which leads to a screen titled "Process Benefit Elections"; and, once taken to the "Benefits Elections Page," the employee must click the shaded rectangle titled "Complete Enrollment."

12. Upon the completion of these steps, a confirmation page appears that lists the employee's name and People First identification number; the page also reads, in pertinent part, "Please save or print for your records . . . This is your confirmation of benefits through the State Group Insurance Program." Notably, the record is devoid of evidence that such a confirmation page was ever generated.

13. While Petitioner's testimony that she "checked the boxes" next to her desired benefits plans has been credited, the undersigned is not persuaded by the greater weight of the evidence that Petitioner completed the process' final two steps on December 13, 2011,<sup>3/</sup> or on any other occasion prior to the expiration of the 60-day deadline.<sup>4/</sup>

14. On or about January 26, 2012, Petitioner became concerned that she had not received any materials concerning the insurance plans in which she thought she had enrolled. On that date, Petitioner telephoned the People First hotline and, at some point during the conversation that ensued, was informed

that there was no record of any benefit elections having been made.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and subject matter of this cause, pursuant to section 120.57(1), Florida Statutes.

16. Enrollment in the state group insurance program is governed by Florida Administrative Code Rule 60P-2.002(1), which provides:

(1) An employee or state officer may apply for enrollment in the Health Program<sup>[5/]</sup>. . .

(a) During the first (60) calendar days of state employment or a new term of office;

(b) During open enrollment;

(c) Within thirty-one (31) days of a [qualifying status change] of losing other group health coverage;

(d) Within thirty-one (31) days of a [qualifying status change] of an increase in the number of work hours for an employee;

(e) Within thirty-one days prior to termination of employment and before the effective date of retirement.

(emphasis added).

17. Petitioner's sole contention in this proceeding is that she utilized People First to enroll in the State Group insurance Program within 60 days of her promotion to a career service position, and, as such, Respondent should immediately



place her in the program. As the party asserting the affirmative of the issue, Petitioner bears the burden of demonstrating, by a preponderance of the evidence, that she took the required steps—prior to the expiration of the 60-day deadline—to make her selections. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981) (holding that "the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal"); § 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"); Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000) (explaining that "[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") (internal quotations and citations omitted).

18. Pursuant to the findings of fact contained herein, Petitioner failed to demonstrate by a greater weight of the evidence that she correctly utilized the People First system to enroll in any insurance plans. Accordingly, the undersigned must recommend that Respondent enter a final order denying Petitioner's request to enroll in the State Group Insurance Program.

19. Notwithstanding the outcome of this case, the predicament in which Petitioner currently finds herself—i.e., without health, dental, or vision insurance—can be remedied during the upcoming open enrollment period.<sup>6/</sup> See Fla. Admin. Code R. 60P-2.002(1).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of State Group Insurance, enter a final order denying Petitioner's request to enroll in the State Group Insurance Program.

DONE AND ENTERED this 4th day of October, 2012, in Tallahassee, Leon County, Florida.



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EDWARD T. BAUER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of October, 2012.

## ENDNOTES

<sup>1/</sup> The People First website is not the only means by which an employee may enroll in an insurance plan; a paper health insurance election form may be used, or the employee may contact the People First service center by telephone.

<sup>2/</sup> During cross-examination, Petitioner admitted that she does not recall the name of the dental plan in which she desired to enroll.

<sup>3/</sup> Petitioner's supervisor, Ms. Carrasco, credibly testified that on December 13, 2011, she watched Petitioner log on to People First and "check the box" next to the Coventry Health Care individual health plan. At that point, however, Ms. Carrasco walked away and is therefore unable to confirm that the remaining steps were completed properly. In light of Petitioner's shaky cross-examination testimony regarding this particular issue—her answers, which have not been credited, were delivered after significant pauses, in a wavering tone of voice, and preceded by the phrase, "I want to say"—the lack of corroborating evidence is fatal to her case.

<sup>4/</sup> On or about December 22, 2011, Respondent mailed a letter to Petitioner's address of record that read, in relevant part, **"Time to choose your state insurance benefits is running out!** You are eligible for outstanding insurance benefit options through the State." (emphasis in original). Although it is likely that Petitioner received this correspondence (Respondents' records demonstrate that the letter was mailed to the correct address), the content of which would suggest to any reasonable person that something was amiss, Petitioner took no action to verify whether any selections had been processed until January 26, 2012—some six days after the expiration of her enrollment window.

<sup>5/</sup> "Health Program," as that term is used in rule 60P-2.002(1), is defined as "the insurance plans offered to eligible subscribers." Fla. Admin. Code R. 60P-1.003(13).

<sup>6/</sup> The open enrollment period for the 2013 plan year will begin on October 8, 2012, and conclude on November 2, 2012. See <https://peoplefirst.myflorida.com> (last accessed September 25, 2012).

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.