

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

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DIVISION OF
ADMINISTRATIVE
HEARINGS

LINDA S. SHAUL,
Petitioner,

Final Order No. DMS - 13-0025

vs.

Case No. 13-000351

DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,

Respondent.

FINAL ORDER

This cause came before the Department for the purpose of issuing a final agency order.

APPEARANCES

For the Division of
Administrative Hearings:

Judge Lynne A. Quimby-Pennock
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

For Petitioner:

Philip J. Lipten, Esq.
800 North Ferncreek Avenue
Suite 5
Orlando, Florida 32803-4127

For Respondent:

Geoffrey M. Christian, Esq.
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner is eligible to receive additional retiree Health Insurance Subsidy (HIS) benefit payments for the period October 2006 through June 2009.

PRELIMINARY STATEMENT

Pursuant to notice, Respondent advised Petitioner that it had reviewed her retirement account and determined that the earliest HIS benefit application it had received from her was by telephone in January 2010. Based on the January 2010 application and insurance premium deductions as proof of coverage, Respondent established Petitioner's HIS effective date as July 1, 2009. Respondent advised that, pursuant to Florida Administrative Code Rule 60S-4.020(2), Petitioner was eligible to receive retroactive HIS payments for the six months prior to the date on which she submitted her application and those retroactive benefits were subsequently paid to her. The notice afforded Petitioner a point of entry to challenge Respondent's proposed action and to request an administrative review of the issues. Petitioner timely filed a request for an administrative hearing. Thereafter, the matter was transferred to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes.

The matter was ultimately heard on March 29, 2013. Petitioner testified on her own behalf and submitted two exhibits, which were admitted into evidence. Respondent presented the testimony of Robin Collins and submitted eight exhibits, which were admitted into evidence. The identity of the exhibits, and the rulings regarding each, are reported in the transcript of the proceeding filed with the Division of

Administrative Hearings on April 15, 2013. The parties' proposed recommended orders were filed and were duly considered by the administrative law judge in the preparation of her recommended order.

On June 5, 2013, the administrative law judge submitted her recommended order, the hearing transcript, and all exhibits offered into evidence to the Department. A copy of the recommended order is attached hereto and made a part hereof. Both parties had the right to submit written exceptions to the Department within 15 days from the date of the recommended order. Neither party submitted written exceptions to the recommended order. The recommended order, hearing transcript, and all hearing exhibits have been carefully reviewed and considered in the preparation of this final agency order.

STANDARD OF REVIEW

Section 120.57(1)(1), Florida Statutes, provides that an agency may reject or modify an administrative law judge's findings of fact only if "the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." The Florida Supreme Court has defined "competent substantial evidence" to mean "such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v.

Sheffield, 95 So.2d 912, 916 (Fla.1975). An agency may not create or add to findings of fact because it is not the trier of fact. See Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco, 475 So.2d 1277, 1281-82 (Fla. 1st DCA 1985); Greseth v. Dep't of Health & Rehabilitative Servs., 573 So.2d 1004, 1006 (Fla. 4th DCA 1991).

Section 120.57(1)(1), Florida Statutes, provides that an agency may reject or modify an administrative law judge's conclusions of law over which the agency has "substantive jurisdiction." When rejecting or modifying such conclusions of law, an agency must state with particularity its reasons for rejecting or modifying such conclusions of law and must make a finding that its substituted conclusions of law are "as or more reasonable" than those which were rejected or modified. § 120.57(1)(1), Fla. Stat. Florida courts have consistently applied this section's "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the administrative law judge's application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the administrative law judge's interpretation of a statute over which the Legislature has provided the agency administrative authority. See Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So.2d 1140, 1141-42 (Fla. 2d DCA 2001); Barfield v. Dep't of Health, 805 So.2d 1008, 1011 (Fla. 1st DCA 2001). An agency's interpretation of the statutes that it administers is entitled to great deference, even if it is

not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. See State Bd. of Optometry v. Fla. Soc'y of Ophthalmology, 538 So.2d 878, 885 (Fla. 1st DCA 1998).

FINDINGS OF FACT

Upon review of the entire record, the Department concludes that the administrative law judge's findings of fact in the recommended order are supported by the competent substantial evidence of record and that the proceedings upon which the findings are based comply with the essential requirements of law. The Department hereby adopts and incorporates by reference the findings of fact set forth in the recommended order.

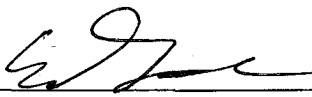
CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the conclusions of law set forth in the recommended order.

Based upon the foregoing it is,

ORDERED and DIRECTED that Petitioner's request to receive additional retiree HIS benefit payments for the period October 2006 through June 2009 is denied.

DONE and ORDERED on this 3 day of July, 2013.


ERIN ROCK, Chief of Staff
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Tallahassee, Florida 32399-0950

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NOTICE OF RIGHT TO APPEAL

UNLESS EXPRESSLY WAIVED BY A PARTY SUCH AS IN A STIPULATION OR IN OTHER SIMILAR FORMS OF SETTLEMENT, ANY PARTY SUBSTANTIALLY AFFECTED BY THIS FINAL ORDER MAY SEEK JUDICIAL REVIEW BY FILING AN ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF MANAGEMENT SERVICES, AND A COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE CLERK OF THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER, IN ACCORDANCE WITH RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, AND SECTION 120.68, FLORIDA STATUTES.

Certificate of Clerk:

Filed in the Office of the Agency Clerk of the Department of Management Services on this 5th day of July, 2013.



Agency Clerk