

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LINDA S. SHAUL,

Petitioner,

vs.

Case No. 13-0351

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF
RETIREMENT,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 29, 2013, in Tallahassee, Florida, before Lynne A. Quimby-Pennock, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Philip J. Lipten, Esquire
Suite 5
800 North Ferncreek Avenue
Orlando, Florida 32803-4127

For Respondent: Geoffrey M. Christian, Esquire
Department of Management Services
Suite 160
4050 Esplanade Way
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to receive retroactive retiree health insurance subsidy benefit payments in addition to those already received.

PRELIMINARY STATEMENT

On October 24, 2012, the Department of Management Services, Division of Retirement (Respondent or Division), issued a denial letter informing Linda S. Shaul (Petitioner or Ms. Shaul) that the Division was not able to provide additional health insurance subsidy benefits retroactively to October 2006. Petitioner timely requested a formal hearing to contest the denial, and the matter was referred to DOAH on January 22, 2013.

The case was set for the final hearing for March 29, 2013. The hearing took place as scheduled.

At hearing, Petitioner testified on her own behalf. Petitioner's Exhibits A and (composite) B^{1/} were received into evidence. The Division presented the testimony of its benefit administrator, Robin Collins. The Division's Exhibits A through H were received into evidence. The parties provided a "Joint Response to [the] Pre-Hearing Order," which contained 17 "Facts Which are Admitted." Some of those facts are utilized below.

At the conclusion of the hearing, Petitioner's counsel requested to file Petitioner's proposed recommended order (PRO)

within 30 days from the filing of the Transcript. No objection was heard from Respondent's counsel, and the request was granted. The Transcript was filed on April 15, 2013. On May 15, 2013, Petitioner's counsel filed a motion for extension of time in which to file the PROs. Respondent did not object to the extension, and the motion was granted. Petitioner timely filed her PRO, which has been considered in the preparation of this Recommended Order. Respondent's PRO was filed on May 23, 2013, but was given consideration because it was only one day late, and the Recommended Order had not been finalized at that point.

References to the Florida Statutes will be to the 2012 version unless otherwise noted.

FINDINGS OF FACT

1. Respondent is charged with managing, governing, and administering the Florida Retirement System (FRS). The FRS is a state-administered retirement system as defined by Florida law.

2. The health insurance subsidy (HIS) benefit is a program provided by Florida Statutes to help offset the cost of a retiree's monthly medical insurance premiums. Currently, the amount paid is \$5 times the years of creditable state service at the time of the retirement calculations. Only those people who were members of the FRS, who apply for and receive monthly retirement benefits are eligible for the HIS.

3. Ms. Shaul worked for the Florida Department of Children and Families (DCF), and its predecessor, the Department of Health and Rehabilitative Services, for 35 years. She was enrolled in the defined benefit plan of the FRS and earned creditable service in the FRS.

4. In October 2001, Ms. Shaul began her participation in the FRS Deferred Retirement Option Program (DROP).

5. In June 2006, the Division provided Ms. Shaul certain forms, brochures and informational material relevant to her DROP participation termination. Via the cover letter, Ms. Shaul was advised in pertinent part:

When your name is added to the retired payroll, you will receive a "retiree packet" that contains an information letter, "After you Retire" booklet, W-4P "Withholding Certificate for Pension Payments," Health Insurance Subsidy application, and Direct Deposit Authorization. The retiree packet is mailed approximately one week before you receive your first monthly benefit.

6. In September 2006, Ms. Shaul completed the DROP termination forms and returned them to the Division.

7. On October 1, 2006, Ms. Shaul retired from her state position. As a prior state employee, Ms. Shaul is a member of the FRS. In mid-October 2006, the Division paid Ms. Shaul her DROP payout. At the end of October 2006, the Division paid Ms. Shaul her first monthly service retirement benefit.

8. A copy of the retiree packet sent to Ms. Shaul is not reflected in her file, as the Division did (and does) not place copies of forms or booklets sent automatically. It is the Division's practice to send each retiree added to the system a retiree packet that includes, among other things, an application for the HIS and an explanation of the subsidy, as well as a booklet containing an explanation of all of the benefits available to retirees and beneficiaries under the FRS. There was no evidence that these forms or booklets were not automatically sent to Ms. Shaul.

9. It is the responsibility of an FRS retiree to apply for the HIS benefit. In the event an FRS retiree does not apply for the HIS benefit, the Division will send a reminder memorandum notifying each retiree that their HIS application has not been received and encouraging them to file for it.

10. In January or early February 2007, Ms. Shaul received a statement indicating that her HIS benefits were not being paid. Ms. Shaul contacted the Division and requested that the appropriate application form be provided to her. Ms. Shaul received the application and completed it; however, she did not return the application in a manner that could be traced, i.e., via certified or registered mail. The Division has no record of receiving this 2007 application.

11. For the next several years, Ms. Shaul did not follow up on the HIS benefit to ensure that she was being properly reimbursed. Each year she would receive her financial statement from the State and immediately provide it to her accountant for tax preparation. In January 2010, Ms. Shaul telephoned the Division to inquire about the HIS benefit. During the 2007-2012 period, the Division sent out newsletters and other notices to all retirees specifically referencing the HIS.^{2/}

12. The Division reviewed Ms. Shaul's service folder via its Integrated Retirement Information System. The Division established Ms. Shaul's HIS benefit effective date as July 1, 2009, based on her January 2010 telephone call to the Division, and the fact that her health insurance premiums were being deducted from her monthly service retirement benefit payment.

13. The Division's record substantiates that Ms. Shaul was paid HIS benefits totaling \$1,200.00 (\$300 for the months of January and February 2010, and \$900 for the six months of retroactive benefits from July 1, 2009, through December 2009).^{3/}

14. The Division issued a notice of final agency action on October 24, 2012, wherein Ms. Shaul was advised that her verbal application for the HIS benefit during the January 2010 telephone call was the earliest record of a HIS benefit being requested on her behalf.

15. The issue is not whether Ms. Shaul remembers completing the HIS benefit application, but when the Division received the application.

16. The credible, persuasive evidence in the record establishes that Ms. Shaul contacted the Division in January 2010 and received the HIS benefit payment for the prior six months.

CONCLUSIONS OF LAW

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

18. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal, unless the burden is established otherwise by statute. Young v. State, Dep't of Cmty. Aff., 567 So. 2d 2 (Fla. 3rd DCA 1990); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).

19. Petitioner has the burden of proof in this proceeding by a preponderance of the evidence. § 120.57(1)(j).

20. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary, 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000).

21. Section 112.363, Florida Statutes (2006), provides in pertinent part:

(2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE
SUBSIDY.--

(a) A person who is retired under a state-administered retirement system . . . is eligible for health insurance subsidy payments provided under this section . . .

(b) For purposes of this section, a person is deemed retired from a state-administered retirement system when he or she terminates employment with all employers participating in the Florida Retirement System as described in s. 121.021(39) and:

* * *

2. For a member of the Florida Retirement System defined benefit program, or any employee who maintains creditable service under both the defined benefit program and the Public Employee Optional Retirement Program, the member begins drawing retirement benefits from the defined benefit program of the Florida Retirement System.

* * *

(d) Payment of the retiree health insurance subsidy shall be made only after coverage for health insurance for the retiree . . . has been certified in writing to the Department of Management Services. Participation in a former employer's group health insurance program is not a requirement for eligibility under this section.

* * *

(3) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.--

* * *

(e)1. Beginning July 1, 2001, each eligible retiree of the defined benefit program of the Florida Retirement System . . . shall receive a monthly retiree health insurance subsidy

payment equal to the number of years of creditable service, as defined in s. 121.021(17), completed at the time of retirement multiplied by \$5; however, no eligible retiree or beneficiary may receive a subsidy payment of more than \$150 or less than \$30. . . . The health insurance subsidy amount payable to any person receiving the retiree health insurance subsidy payment on July 1, 2001, shall not be reduced solely by operation of this subparagraph.

(7) ADMINISTRATION OF SYSTEM.--The Department of Management Services may adopt such rules and regulations as are necessary for the effective and efficient administration of this section. The cost of administration shall be appropriated from the trust fund.

* * *

(9) BENEFITS.--Subsidy payments shall be payable under the retiree health insurance subsidy program only to participants in the program or their beneficiaries, beginning with the month the division receives certification of coverage for health insurance for the eligible retiree or beneficiary. If the division receives such certification at any time during the 6 months after retirement benefits commence, the retiree health insurance subsidy shall be paid retroactive to the effective retirement date. If, however, the division receives such certification 7 or more months after commencement of benefits, the retroactive retiree health insurance subsidy payment will cover a maximum of 6 months. Such subsidy payments shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.

22. Florida Administrative Code Rule 60S-4.020(1999) provides in pertinent part:

1. A monthly retiree health insurance subsidy shall be paid to each eligible retired member . . . receiving a benefit from a state-administered retirement system. . . .

* * *

2. Health insurance coverage for the retiree or beneficiary must be certified in accordance with procedures established by the Division. If the Division receives such certification within 6 months after retirement benefits commence, the Retiree Health Insurance Subsidy shall be paid retroactive to the effective retirement date. However, if the Division receives the certification of insurance coverage 6 or more months after retirement benefits commence, the member will be eligible to receive retroactive payments for a maximum of 6 months only.

3. The Retiree Health Insurance Subsidy shall be paid to eligible persons by the Division. The amount of the monthly retiree health insurance subsidy payment shall be equal to the number of years of creditable service included in the calculation of the member's retirement benefit multiplied by:

* * *

(d) \$5, beginning January 1, 1999, the subsidy amount not to exceed \$150, or be less than \$50.

23. Section 112.363 limits retroactive payment of HIS benefits to a maximum of six months. The Division has no authority to pay more than six months retroactive HIS benefits. This is a legislative limitation giving no discretion to the Division.

24. Section 112.363 does not impose a duty on the Division to repeatedly notify or remind retirees of the HIS. However, the Division sends numerous notices or publications to all retirees specifically referencing the HIS.

25. There is no dispute that Ms. Shaul is entitled to receive, and does receive, the HIS benefit as described above. The only question is whether she should receive additional retroactive benefits amounting to approximately \$4,950.

26. The persuasive evidence establishes that Ms. Shaul requested and received her HIS benefit beginning in January 2010 and for the six months prior to January 2010. Ms. Shaul has received the maximum retroactive HIS benefit allowed by law. Ms. Shaul is not entitled to any additional HIS benefit payments.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of Retirement, issue a final order denying Ms. Shaul's request for additional HIS benefits retroactive to the date of her termination of DROP.

DONE AND ENTERED this 5th day of June, 2013, in Tallahassee,
Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of June, 2013.

ENDNOTES

^{1/} At the beginning of the hearing both parties agreed to the admission of all the exhibits. During Petitioner's case-in-chief, no testimony was elicited that would shed light on Petitioner's two exhibits.

^{2/} Ms. Shaul admitted to receiving a notice regarding the HIS benefit in the spring 2007, but she did not follow up on her HIS application because she thought it had been sent.

^{3/} The parties agreed that Ms. Shaul received \$1,200.00 in HIS benefits. This appears to be \$300.00 more than allowed by law; however, there was no request for the return of the alleged over payment, [calculation \$150.00 (maximum amount allowed for years of service) x 6 months equals \$900.00].

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.