

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DENISE MORROW,

Petitioner,

vs.

Case No. 15-3763

DEPARTMENT OF MANAGEMENT  
SERVICES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

A final hearing was held in this case on September 29, 2015, before David M. Maloney, Administrative Law Judge with the Division of Administrative Hearings in Tallahassee, Leon County, Florida.

APPEARANCES

For Petitioner: Denise Morrow, pro se  
1560 High Road, Apartment 227A  
Tallahassee, Florida 32304

For Respondent: Veronica E. Donnelly, Esquire  
Department of Management Services  
4050 Esplanade Way, Suite 160  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

Whether as a matter of fact Petitioner enrolled in an employer-sponsored health care benefits plan within 60 days of her full-time employment with the Department of Revenue?

If not, whether a problem with the online registration system resulted in Petitioner not being timely enrolled in a health care benefits plan?

The resolution of these two issues will result in a determination of the ultimate issue: whether Petitioner is entitled to enrollment in an employer-sponsored health care benefits plan for the 2015 Plan Year.

PRELIMINARY STATEMENT

On June 30, 2015, the Division of Administrative Hearings (DOAH) received a letter (the "Referral Letter") from Patrick K. Wiggins, assistant general counsel and hearing officer for the Department of Management Services (DMS or the "Department"). The Referral Letter notified DOAH that this case had been referred to DOAH after the termination of informal proceedings before the Department. Attached to the Referral Letter were three documents: an order transferring the matter, a request by Petitioner deemed to be one for an informal hearing, and an agency action letter.

The referral to DOAH was preceded by a series of related events. First, in early 2015, Petitioner requested the People First Service Center to enroll her in the State Group Insurance Program without a Qualifying Status Change (QSC). The request was rejected. Petitioner's Level I appeal of the rejection was

forwarded to the Department's Division of State Group Insurance (DSGI), where it was elevated to a Level II appeal.

On March 6, 2015, DSGI issued a letter that denied Petitioner's Level II appeal (the agency action letter attached to the Referral Letter). The agency action letter offered Petitioner two options: a request for a formal hearing that complies with Florida Administrative Code Rule 28-106.201 that states facts in dispute or a request for informal hearing. In response, Petitioner submitted a letter. Filed with the agency clerk for DMS on March 27, 2015, the letter asked that Petitioner be permitted to enroll in the State Group Insurance Program and was treated as a request for an informal hearing. The informal proceeding was conducted on June 29, 2015. When in the judgment of the presiding officer disputed issues of material fact arose, he terminated the informal hearing and ordered the matter transferred to DOAH. The order found disputed issues of material fact to include two issues: whether Petitioner enrolled in the health care benefits plan within 60 days of her employment with a state agency; and, if not, whether a problem with the online registration system resulted in Petitioner not being timely enrolled.

The undersigned was designated by DOAH as the administrative law judge to conduct the proceeding. The case was promptly set for hearing. After two continuances, one at the request of

Respondent and the other at Petitioner's, the case was rescheduled and heard on September 29, 2015.

Prior to the hearing, Respondent's Motion to Restrict the Use and Disclosure of Protected Information Concerning State Employees and Dependents and Respondent's Motion for Official Recognition were granted. At hearing, the Department proceeded first. It presented the testimony of Dwayne Purifoy and Debra Shoup. Respondent's Exhibits 1 through 7 were offered into evidence and admitted without objection. Petitioner testified on her own behalf, and Petitioner's Exhibit 1 was admitted without objection.

A court reporter was present during the hearing, but a transcript of the proceeding was not ordered by either party. At the conclusion of the hearing, the parties agreed to a deadline of Wednesday, October 7, 2015, to submit proposed recommended orders. Petitioner was advised to contact the DOAH Clerk regarding recommended order formatting and requirements. Respondent offered to send Petitioner the DOAH link on the internet. Both parties timely submitted proposed orders containing findings of fact and conclusions of law and they have been given due consideration.

References to statutes are to Florida Statutes (2014), unless otherwise noted.

FINDINGS OF FACT

a. Petitioner, Her New Hire Date, and the 60-Day Window

1. Petitioner, Denise Morrow, is currently a full-time employee (FTE) of the Florida Department of Revenue.

2. Since childhood, she has been enrolled in a federally supported specialized health insurance program. Full-time employment may jeopardize the specialized health insurance coverage, and, at the hearing, Petitioner alluded to an ongoing investigation that could lead to its loss. It may be inferred from Petitioner's testimony that whatever the outcome of an investigation, her specialized health insurance coverage had not yet been discontinued as of the time of hearing because of her FTE status with the Department of Revenue.

3. Sometime between November 14 and November 17, 2014,<sup>1/</sup> Petitioner was hired as a computer programmer analyst with the Department of Revenue in FTE capacity. A new hire benefits package was sent to Petitioner on November 19, 2014. Petitioner received it.

4. Prior to the hire, Petitioner had been a part-time OPS employee with Florida State University (the "University"). In her OPS capacity, she was not allowed to work 30 hours or more in any week. Were she to do so, Petitioner believed it could lead to her being considered entitled to FTE health insurance benefits and would threaten her specialized health insurance coverage.

Consequently, Petitioner's work weeks at the University were 29 hours and a fraction of a 30th hour at most.

5. Petitioner's employment at the University overlapped her FTE employment with the Department of Revenue until February 14, 2015. During the time of the overlap, from mid-November 2014 through February 14, 2015, Petitioner had two active People First ID numbers.

6. From the moment of hire, Petitioner had 60 days (the 60-Day Window) in which to enroll in the employee health insurance program. The 60-Day Window lasted until January 13, 2015, if she was hired on November 14, 2014, and until January 16, 2015, if she was hired on November 17, 2014. If Petitioner did not enroll in an employee health insurance program within the 60-Day Window then, absent a QSC after her hire, Petitioner lost the ability to obtain employee health insurance benefits until the next open enrollment program from October 19 through November 6, 2015. Should she enroll in an employee health insurance program in the October/November 2015 open enrollment period, the enrollment would be effective on January 1, 2016.

7. The records of DSGI do not show that Petitioner enrolled in the employee health insurance program during the 60-Day Window.

8. Unless a QSC subsequent to hire occurs, if Petitioner's Level II appeal is not granted, she will not be eligible to receive benefits from the employee health insurance program until January 1, 2016, and only then if she enrolls during the 2015 open enrollment period.

9. Petitioner contends she enrolled in the employee health insurance program in late November 2014 and that if DSGI records do not show enrollment, it must be due to computer error. At stake in this proceeding is whether Petitioner will receive any employee health insurance benefits for the entirety of the period of her FTE employment with the Department of Revenue from November 2014 through December 31, 2015.

b. Online Administration

10. Employee health insurance benefits are administered by a private contractor, Northgate Arinso, through an online system called "People First." An employee who applies for enrollment can use the online system and can call People First to assist in the process.

11. If an employee has difficulties with the online system, People First will assist with enrollment by telephone and will make the computer entries into the system on the employer's behalf.

12. Petitioner's 60-Day Window was close in time to the 2014 open enrollment period, but it was outside the period; the 60-Day Window commenced after open enrollment had closed.

13. When an employee is eligible for benefits, an overlay is placed on the employee's home page on the People First online system. The overlay requests that the employee complete an address verification process and a dependent certification process prior to health insurance enrollment.

14. Once the processes for address verification and dependent certification are completed, a message that thanks the employee appears on the computer screen. The "thank you" message clears the way for the employee to either commence with enrollment by clicking an "Enroll Now" box or defer the opportunity to enroll by clicking in an "Enroll Later" box, which closes the program.

15. If an employee defers and decides later to enroll, access to the enrollment pages can be gained on the employee's People First home page. The employee can use a drop down box entitled "Health & Insurance" with the subheading, "Change My Benefits." Or, if there has been a QSC event, the employee can use the "Health & Insurance" home page with an icon denominated "Change My Benefits" icon to make changes.

16. The enrollment process requires an employee to select a health plan, agree to the premium amount to be collected from



paychecks, and certify that the information entered is true and correct. The final step in enrollment has two parts: entry of the employee's People First password and clicking the "Complete Enrollment" box. So long as the employee has entered all the required information, clicking on the "Complete Enrollment" box finalizes the enrollment.

17. Upon completion of enrollment, a benefits confirmation document is generated. An employee can print the document immediately for record keeping. Additionally, the benefits confirmation statement is mailed by People First to the employee's address of record supplied through the address verification entered by the employee. A record of the mailing of the confirmation of benefits document is maintained by People First as part of its business records in a correspondence history for the individual employee. The completion of enrollment is reflected also in an audit of the moments the employee gains access to the People First online system. The audit is not ordinarily available; it must be requested. Any telephone contact with an employee is maintained through a log of call notes.

c. Online Activity and the 30-Day Reminder Letter

18. An audit of Petitioner's activity in the People First online system under both of her People First ID numbers shows

that Petitioner entered the "Change My Benefits" screen 20 times during the 60-Day Window.

19. She entered the "Change My Benefits" screen twice on November 19, 2014. The following day, November 20, 2014, she again entered the "Change My Benefits" screen twice. Her online activity on November 20, 2014, included completion of the address verification process used to ensure receipt of communications from People First, insurance companies, and her employer, the Department of Revenue. The address verification "thank you" from People First is noted in the People First correspondence log for Petitioner kept at the Department of Revenue.

20. Petitioner did not begin enrollment in health insurance benefits on November 20, 2014. In order to leave the system with the intent of foregoing enrollment at that time and deferring until later, she was required to click the "Enroll Later" box and close the program after the address verification was completed. The audit does not show that Petitioner commenced the enrollment process on or before November 20, 2014. (Petitioner's testimony is consistent on this point. She testified that she did not enroll when she accessed the online system several times prior to when she claims she eventually enrolled, some unspecified date in late November 2014.)

21. Petitioner gained access to the "Change My Benefits" screen twice on November 21, 2014, and twice on November 24,

2014. The entry onto the screen twice in each of the four days in November (November 19, 20, 21, and 24) that the audit shows Petitioner visited the "Change My Benefits" page is consistent with her testimony that she toggled between her University People First screen and her Department of Revenue People First screen each time she entered the "Change My Benefits" screen.

22. Petitioner testified that she completed enrollment in an employee health benefits plan on a date she could not recall in late November 2014. (The date, presumably, would be November 21 or 24, the two dates she accessed the "Change My Benefits" page in November after her first two visits to the page.) Failure to recall the date is understandable given the number of times she accessed the page over the six-day period from November 19 through November 24. But, in addition to not remembering the date, Petitioner could not recall the plan that she selected. She testified that under the listings of plans by each company there were numerous plans from which to choose and she could not remember the exact plan that she selected. While this failure to recall (whatever the plan's complexities) is of more concern than failure to recall the date, her testimony contained a greater failure of recall. She did not remember the company that she selected either.

23. A 30-day reminder letter is sent out by People First to employees who have not confirmed benefit selections within the

first 30 days of eligibility. The People First correspondence history shows a 30-day reminder letter was created for Petitioner on December 17, 2014, and was sent to her on December 18, 2014. Petitioner confirmed that she received the 30-day reminder letter.

24. The form reminder letter begins with a sentence in bold that reads, "**Time to choose your state insurance benefits is running out!**" Respondent's Ex. 3. The letter goes on to declare the recipient eligible for insurance benefits through the State Group Insurance Program, to provide details about when and how to enroll on the website, to give online site information of where detailed information may be obtained to make educated decisions, and to refer to enclosed documents about other benefits information. The closing of the letter states, "Finally, if you have any questions about how to enroll, make payments or use People First, please give us a call at (866) 663-4735. TTY users call (866) 221-0268. We are open Monday through Friday, from 8:00 a.m. to 6:00 p.m. Eastern Time." Id.

25. Petitioner did not present any evidence that she attempted to reach People First at the telephone number provided in the 30-day reminder letter during the 60-Day Window. Nor did she present any evidence that she attempted to get assistance from People First in any other manner or from the Department of Revenue personnel office or its human resource officer during the

time period critical to enrollment. But she was concerned, she alleged, about the status of her enrollment after the time she claimed to have completed enrollment--late in November. Petitioner testified her efforts to ensure enrollment were by continued access to the "Change My Benefits" page. Whatever the purpose, the audit confirms more visits by Petitioner to the page. It reveals 12 post-November 2014 visits: twice on December 1, 2014; twice on December 2, 2014; twice on December 3, 2014; twice on December 4, 2014; twice on January 5, 2015; and twice on January 12, 2015.

26. Other than the 12 visits to the "Change My Benefits" page in December 2014 and January 2015, four of which occurred after receipt of the 30-day reminder letter, Petitioner took no action to verify that she had been enrolled in a health plan until more than two weeks after the 60-Day Window had expired. On February 3, 2015, Petitioner contacted People First about her enrollment status. When Petitioner was informed that she was not enrolled, she began the appeal process which ultimately was elevated to a Level II appeal before DSGI.

d. DSGI Action

27. Respondent denied Petitioner's Level II appeal for enrollment outside of the 60-Day Window because she had not had a QSC event subsequent to hire and because there was no information or record in the People First online system to support

Petitioner's assertion that she had completed enrollment. The records do not contain the identity of a plan in which she sought enrollment. The records do not contain a benefits confirmation statement. The audit demonstrates that "Change My Benefits" was viewed by Petitioner, but never changed. Premiums were never taken from Petitioner's pay check.

28. Petitioner claims that if the system does not show her to have enrolled, it is because there were flaws in the system or a malfunction that caused her enrollment to be lost.

29. The People First online system is reviewed for possible computer malfunctions or errors every 15 days with corrections being made upon discovery. No errors were found in Petitioner's files during these routine reviews.

#### CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. §§ 120.569 and 120.57, Fla. Stat. (2015).

31. Enrollment in employee benefits by new hire FTEs is governed by Florida Administrative Code Rule 60P-2.002(1)(a). In pertinent part, it provides that "[a]n employee or state officer may apply for enrollment in the Health Program . . . [d]uring the first (60) calendar days of state employment or a new term of office."

32. As the party asserting the affirmative of issues, Petitioner has the burden of demonstrating by a preponderance of the evidence that she took the steps to enroll within the 60-Day Window and that if the system did not accept her enrollment, it was because of system error. See Marisol Duran v. Dep't of Mgmt. Servs., Div. of State Group Ins., Case No. 12-2259 (Fla. DOAH Oct. 4, 2012; Fla. DMS, DSGI Dec. 21, 2012); § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence [with non-relevant exceptions]."); Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000) (explaining that "[a] preponderance of the evidences 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).

33. Pursuant to the findings of fact, Petitioner failed to demonstrate by a greater weight of the evidence that using the People First online system she timely enrolled in an employer-sponsored health care benefits plan, that is, within the 60-Day Window that expired at the latest on January 16, 2015. She also failed to demonstrate by a greater weight of the evidence that her lack of enrollment was due to an error or some other problem with the People First online system.

RECOMMENDATION

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

RECOMMENDED that the Department of Management Services, Division of Group State Insurance, enter a final order denying Petitioner's request to enroll in the State Group Insurance Program and affirming its denial of her Level II appeal.

DONE AND ENTERED this 16th day of October, 2015, in Tallahassee, Leon County, Florida.



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DAVID M. MALONEY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of October, 2015.

ENDNOTE

<sup>1/</sup> Petitioner asserts in her proposed order that she was hired on November 17, 2014. Respondent asserts in its proposed order that the date of hire was November 14, 2014. This Recommended Order is not benefited by a transcript of the final hearing. Notes taken during the hearing indicate that Petitioner agreed with the November 14 date at the time of hearing. Whether the "new hire" date is November 14 or 17 (or any date between the two) is immaterial to the outcome of this case. It is sufficient to know



that Petitioner's new hire date is between November 14 and 17, 2014.

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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.