

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VALERIE MURPHY,

Petitioner,

vs.

Case No. 16-0519

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016),^{1/} on May 11, 2016, by video teleconference sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: No appearance

For Respondent: Stefanie Beach Camfield, Esquire
Department of Children and Families
Regional Counsel
Suite S-1129
400 West Robinson Street
Orlando, Florida 32806

PRELIMINARY STATEMENT

On December 23, 2015, the Department of Children and Families (the "Department") notified Petitioner that her salary

was overpaid for the pay period from November 11, 2015, through December 3, 2015.

On January 14, 2016, Petitioner filed a request for an administrative hearing with the Department. Petitioner disputes that she was overpaid.

The Department referred this matter to the Division of Administrative Hearings ("DOAH") on January 29, 2016, and requested assignment of an Administrative Law Judge to conduct a formal evidentiary hearing. In its referral Notice, the Department asserted that a threshold issue in this matter concerned whether the Department received Petitioner's request for hearing within 21 days after Petitioner received notice of the Department's decision.

On February 4, 2016, the undersigned scheduled the final hearing for March 31, 2016. A Notice of Hearing was issued notifying the parties of the date, time, and location of the final hearing, and other pertinent procedures. On February 9, 2016, following the Department's Response to Initial Order, the undersigned issued an Amended Notice of Hearing which rescheduled the final hearing to April 7, 2016, at 1:00 p.m. On February 11, 2016, the undersigned issued a Second Amended Notice of Hearing which amended the hearing time only. On March 7, 2016, the Department filed a Motion to Continue. That same date, the undersigned issued an Order Granting Continuance and

Re-Scheduling Hearing By Video Teleconference ("Order"). The final hearing was rescheduled for May 11, 2016, at 9:30 a.m., to be heard by video teleconference at sites in Orlando and Tallahassee, Florida. The Order was served on all parties and mailed to Petitioner's address of record with DOAH.

At the final hearing, Department Exhibits A through D were admitted into evidence.

FINDINGS OF FACT

1. The final hearing was convened, as duly noticed, on May 11, 2016, at 9:30 a.m. The Department's counsel appeared at the hearing. Petitioner did not appear. Petitioner did not file any correspondence or evidence for consideration at the final hearing.

2. The Department received the Order Granting Continuance and Re-scheduling Hearing By Video Teleconference issued on March 7, 2016, and was aware of the date, time, and location of the final hearing on May 11, 2016. The Department's counsel also confirmed that Petitioner's address of record with DOAH was the same address the Division maintained for Petitioner.

3. On December 15, 2015, the Department sent Petitioner a letter regarding her salary overpayment. The letter informed Petitioner that her salary had been overpaid for the pay period from November 20, 2015, through December 3, 2015, in the amount

of \$399.28. The Department's documentation establishes that Petitioner received the letter on December 23, 2015.

4. On January 14, 2016, the Department received Petitioner's request for an administrative hearing. In her request, Petitioner stated that "the information of salary overpayment is incorrect."

CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the subject matter and parties to this proceeding pursuant to sections 120.569 and 120.57(1).

6. Absent specific statutory authority, the burden of proof is on the party asserting the affirmative of an issue in an administrative proceeding. Antel v. Dep't of Prof'l Reg., 522 So. 2d 1056 (Fla. 5th DCA 1988); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). The preponderance of the evidence standard is applicable to this case. See § 120.57(1)(j), Fla. Stat.; Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). Accordingly, Petitioner has the burden of proving, by a preponderance of the evidence, that she is entitled to receive the portion of her salary the Department asserts is an overpayment.

7. By failing to appear at the final hearing, Petitioner failed to present any evidence to meet her burden. Consequently,

Petitioner did not prove that she should be paid the additional salary she claims she is entitled to receive from the Department.

8. In addition, unless otherwise provided by law, persons seeking a formal administrative hearing regarding an agency decision shall file a petition for hearing with the agency within 21 days of receipt of the agency's written notice. See Fla. Admin. Code R. 28-106.111(2). Any person who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters. See Fla. Admin. Code R. 28-106.111(4). A request for hearing that has been untimely filed shall be dismissed. See § 120.569(2)(c), Fla. Stat.

9. Petitioner filed her written request for an administrative hearing with the Department 22 days after her receipt of the Department's letter. Consequently, Petitioner's request for hearing was untimely filed, and she waived her right to an administrative hearing to review her dispute.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order in this proceeding dismissing Petitioner's request for an administrative hearing under chapter 120, Florida Statutes.

DONE AND ENTERED this 18th day of May, 2016, in Tallahassee,
Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of May, 2016.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2016),
unless otherwise noted.

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.