

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CLAY A. TIDWELL,

Petitioner,

vs.

Case No. 16-1259

DEPARTMENT OF MANAGEMENT  
SERVICES, DIVISION OF STATE  
GROUP INSURANCE,

Respondent.

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RECOMMENDED ORDER

A formal hearing was held in this case on May 4, 2016, in Tallahassee, Florida, before Administrative Law Judge Suzanne Van Wyk of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Clay Allen Tidwell, pro se  
1577 Cinnamon Bear Circle  
Tallahassee, Florida 32311

For Respondent: Gavin D. Burgess, Esquire  
Department of Management Services  
4050 Esplanade Way, Suite 160  
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner is entitled to change his dental benefit election in the State Group Insurance Program for the 2016 plan year.

PRELIMINARY STATEMENT

In a letter dated February 2, 2016, Respondent notified Petitioner that it had rejected his request to change his dental insurance coverage for the 2016 plan year without a Qualifying Status Change (QSC) event.<sup>1/</sup> 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 are requesting to change your dental insurance coverage.

In response to your appeal, DSGI requested detailed information and records from the People First Service Center, including call notes. We reviewed those call notes and other documentation, along with your letter and information.

The State Group Health Insurance Plan rules governing the plan, specifically Rule 60P-6.0068, Florida Administrative Code, states that an election made under the Pretax Premium Plan shall be irrevocable during the Plan Year except when a participant experiences a Qualifying Status Change (QSC) event. These rules and section 125 of the Internal Revenue Code, which applies to pretax benefit plans, limit our ability to allow enrollment or coverage changes.

After carefully reviewing your appeal documents and based upon the facts above, we must deny your Level II Appeal because you have not experienced a QSC event that would allow you to change your dental benefits at this time.

Dissatisfied with Respondent's decision, Petitioner timely requested a formal administrative hearing. On March 3, 2016,

Respondent referred the matter to the Division of Administrative Hearings (the Division) to assign an Administrative Law Judge to conduct the final hearing.

The final hearing was held on May 4, 2016, during which Petitioner testified on his own behalf and introduced the testimony of Alison Bonnell and Heather Cleary. Petitioner's Exhibits P1 (composite) through P6 were admitted in evidence. Respondent presented the testimony of Sandie Wade and Dwayne Purifoy, and introduced Exhibits R1, R3, R4, and R6, which were admitted in evidence. The undersigned granted Respondent's Motion for Official Recognition of various rules and statutes governing the State Group Insurance Program, as well as orders of the Division and sections of the Internal Revenue Code and the Code of Federal Regulations.

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.

All references herein to the Florida Statutes are to the 2015 version.

#### FINDINGS OF FACT

1. At all times relevant hereto, Petitioner was an employee of the Department of Management Services (DMS) and was

a participant in the State Group Insurance Program.<sup>2/</sup> Petitioner was enrolled in dental benefit coverage for the 2015 plan year.

2. Each year during open enrollment, program participants may elect new benefits or change benefits for which they are enrolled. Open enrollment usually occurs during a two-week period in the fall of each year.

3. Benefits, including insurance plans, are administered by a private contractor, Northgate Arinso, through an online system known as "People First."

4. Petitioner intended to change his dental insurance coverage during the open enrollment period for the 2016 plan year.

5. On October 21, 2015, Petitioner logged on to the People First website and viewed the "Change My Benefits" screen. Petitioner had researched the various coverages available well in advance of enrollment, and knew he wanted to enroll in a preferred provider plan offered by Humana. Petitioner found the plan he was seeking and selected "next" from prompts on the computer screen.

6. Petitioner remembers next selecting "confirm" from the screen prompts, and reported that the next, and last, computer screen he saw was the People First home screen.

7. Petitioner did not review a confirmation of benefits statement confirming his intended change in dental benefits.

8. Petitioner then viewed the page displaying his current benefits, which showed the same dental coverage he had for the 2015 plan year.

9. Petitioner asked his co-worker, Alison Bonnell, when the system would reflect his change in dental coverage, and she replied that it would not change until January 2016.

10. Petitioner asked his supervisor, Heather Cleary, how he could view the change he had made. Ms. Cleary, who was new to DMS, stated she did not know, but suggested Petitioner contact human resources if he needed assistance.

11. Petitioner made no further inquiries regarding his dental benefits until January 1, 2016, when he logged in to People First and viewed the "My Benefits" page, which showed the same dental coverage in which he was enrolled for the 2015 plan year.

12. Petitioner alleges that he effectively changed his dental coverage for the 2016 plan year, but that, due to an error in the People First system, his election was not saved. Petitioner now seeks to change his dental benefit effective for the 2016 plan year.

13. During open enrollment for the 2016 plan year, the People First website required all eligible participants to first complete a process verifying their mailing and email addresses, then certifying their dependents.

14. Following completion of that confirmation and verification process, the system presented participants with the home screen from which participants could choose from a number of tabs, including "Health & Insurance." The Health & Insurance page provided the following options:

**General Benefits Information**

Go to the MyBenefits website for your insurance options.

**Your Benefits**

Review your current and past benefits.

**Insurance Companies**

See contact information.

**Your Dependents' Information**

View and update dependents' information.

**Change My Benefits**

Makes changes with a qualifying event.

**Click here for open enrollment.**

**Benefit Premium History**

Review your insurance payment history.

**Benefits Materials**

View and request insurance forms and booklets.

**Confirmation Statement**

View your confirmation statement.

15. If a participant selected "Change My Benefits," the participant was presented with a screen to choose the event triggering enrollment--new hire or open enrollment. Selecting "open enrollment" revealed an enrollment summary screen with a chart listing the categories of "health," "basic life,"

"optional life," "dental," and "vision" coverage in the left-hand column. If the participant was enrolled in one of the options, the chart listed the name of the plan in which they are enrolled in the middle column, and, in a column titled "make a change," the participant could select "cancel" to cancel that coverage. For all other options, the participant could select "add" in the "make a change" column to enroll in a plan.

16. If a participant selected the option to "add" a plan, they were navigated to a screen which displayed all the choices for that type of coverage, in this case dental coverage. Once a coverage plan was selected, the program prompted the participant to "complete enrollment."

17. At the bottom of the enrollment summary screen, participants were presented with the following statement:

By selecting "Complete Enrollment," I hereby certify that the information entered is true and correct and that all dependents listed above are eligible. I understand that my elections can only be changed during Open Enrollment or as the result of a Qualifying State Change event as defined by the Internal Revenue Code and/or the Florida Administrative Code. I agree to notify People First of any QSC events within the prescribed time frame and to supply the appropriate supporting documentation upon request; otherwise, any requested changes will not be allowed. If any dependent is determined to be ineligible or I fail to notify People First of a loss of eligibility or any supporting documentation is not provided upon request, I understand that I

may be liable for any and all claims paid  
for any dependent deemed ineligible.

Following this statement was a box in which the participant must enter his or her password and select "Complete Enrollment."

18. Upon selecting "Complete Enrollment," participants were notified that a confirmation statement was available in the People First system for his or her review. A participant must have returned to the home screen and selected "Confirmation Statement" to view the statement to confirm any change in his or her elections.

19. Petitioner testified that he did not enter his People First password to complete his enrollment on October 21, 2015. Rather, Petitioner reported that, because he was redirected to the People First home screen after selecting the dental plan option he was seeking, he was not prompted to complete his enrollment.

20. Petitioner did not select the "Confirmation Statement" tab and review any statements in the system for his account.

21. Petitioner did select the "My Benefits" tab, which confirmed the same dental coverage which he had selected for the 2015 plan year.

22. Petitioner did not contact the People First service center for assistance.



23. Dwayne Purifoy has served as operations manager for Northgate Arinso for 12 years. Mr. Purifoy oversees the operation of the People First program.

24. Mr. Purifoy admitted that if the People First program "timed out" during the selection process, the participant would not receive a notification to that affect, and any changes the participant made would not be saved.

25. The People First program records participant interactions with the system, including when a participant logs in, views benefits, and changes benefits. The system record shows that Petitioner logged in to the "Change My Benefits" page on October 21, 2015. The system does not contain a record that Petitioner changed any of his selected benefits during the open enrollment period.

26. The preponderance of the evidence supports a finding that Petitioner, despite his intentions to the contrary, did not complete a change to his dental benefit election under the State Group Insurance Program for the 2016 plan year.

27. Petitioner did not experience any QSC event during the 2016 plan year.

#### CONCLUSIONS OF LAW

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

29. 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>[3/1]</sup>. . . .

(a) During the first sixty (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.

30. Rule 60P-6.0068 governs changes in participation by program participants, and provides that "[a]n election made under the Pretax Premium Plan shall be irrevocable during the Plan Year except when a participant experiences a [qualifying status change] event."

31. Petitioner's sole contention in this proceeding is that he utilized People First to change his dental benefit election during the open enrollment period for the 2016 plan year, but, due to an error in the program, his change was not saved. As such, Petitioner requests Respondent immediately

enroll him in the Humana dental benefit plan in which he intended to enroll.

32. As the party asserting the affirmative of the issue, Petitioner bears the burden of demonstrating, by a preponderance of the evidence, that he took the required steps--prior to the expiration of the open enrollment period--to make his 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), Fla. Stat. ("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).

33. Pursuant to the Findings of Fact contained herein, Petitioner failed to demonstrate by a greater weight of the evidence that he correctly utilized the People First system to change his dental benefit for the 2016 plan year. Even if Petitioner had proven that the People First system "timed out" while he was attempting to change his benefit election, that

would not support a finding that Petitioner had successfully completed the election change. It may not be fair that the system would not have notified Petitioner of a "time out" and informed him that he needed to start over with his election process. However, it is not a legal basis on which to require a change in Petitioner's benefit election during the plan year absent a QSC event.

34. Accordingly, the undersigned must recommend that Respondent enter a final order denying Petitioner's request to change his dental coverage election for the 2016 plan year.

35. As admitted by Petitioner at the final hearing, the open enrollment period for the 2017 plan year is rapidly approaching, and Petitioner may elect to change his dental coverage at that time. 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 change his dental benefit coverage in the State Group Insurance Program for the 2016 plan year.

DONE AND ENTERED this 24th day of May, 2016, in  
Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of May, 2016.

ENDNOTES

<sup>1/</sup> A QSC event is a "change in employment status, for subscriber or spouse, family status or significant change in health coverage of the employee or spouse attributable to the spouse's employment." Fla. Admin. Code R. 60P-1.003(17).

<sup>2/</sup> Section 110.123, Florida Statutes, provides for the State Group Insurance Program, a comprehensive package of health insurance and retirement benefits provided for state employees in a cost-efficient manner allowing state employees to choose benefit plans which best suit their individual needs. See § 110.123(3), Fla. Stat.

<sup>3/</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).

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.