

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

JUDITH A. RICHARDS,

Petitioner,

vs.

Case No. 20-4558

DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by Zoom video teleconference on January 25, 2021, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

For Petitioner: Judith Richards, pro se
2337 Louise Street
Kissimmee, Florida 34741

For Respondent: Gayla Grant, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner, Judith Richards, is eligible for the health insurance subsidy offered to Florida Retirement System retirees.

PRELIMINARY STATEMENT

Mrs. Judith A. Richards (Petitioner/Mrs. Richards) was employed by the Osceola County Sheriff's Office from November 2011 through July 18, 2019.

Throughout the duration of her employment, Mrs. Richards was enrolled in the Florida Retirement System (FRS) investment plan option. By correspondence dated January 30, 2020, the Department of Management Services, Division of Retirement (Respondent/DMS), informed Mrs. Richards that her application for the FRS retiree health insurance subsidy (HIS) was denied due to her failure to meet the HIS vesting requirement. This correspondence also advised Mrs. Richards of her rights under chapter 120, Florida Statutes (2020),¹ and, in response thereto, Mrs. Richards timely submitted a request for administrative review. Following a proceeding under section 120.57(2), the instant matter was referred to the Division of Administrative Hearings (DOAH) for a disputed fact hearing.

According to Petitioner, on September 26, 2019, she contacted DMS and was verbally informed that she was eligible for the HIS. On or about October 10, 2019, Petitioner filed with DMS her application for the HIS, and was subsequently informed by DMS that her application for the HIS was rejected because she failed to “satisfy the vesting requirements for [her] membership class (8 years) under the pension plan.” Petitioner contends that had she been given accurate advice by DMS, she would have deferred receipt of her benefits, and secured FRS-eligible employment for the approximate three additional months needed to satisfy the requisite vesting period. In other words, Mrs. Richards suggests that she relied to her detriment on the false information provided to her by DMS. Petitioner does not seek to undue or reverse her retirement decision; however, Petitioner seeks affirmative relief in the form of DMS authorizing payment to her of the monthly HIS benefit.

¹ All references are to the 2020 version of the Florida Statutes, unless otherwise indicated.

Generally, in civil actions, allegations concerning the alleged supplying of false information may result in a claim sounding in tort. *See Baggett v. Electricians Local 915*, 620 So. 2d 784 (Fla. 2d DCA 1993) (requirements for claims based on negligent misrepresentation); *see also* RESTATEMENT (SECOND) OF TORTS § 552 (1977). Section 768.28, Florida Statutes, governs tort claims filed against the State of Florida, and the same does not grant jurisdiction to DOAH to resolve such disputes. Accordingly, DOAH does not have subject matter jurisdiction over any aspect of Petitioner's claim related to alleged negligent misrepresentation by DMS.² DOAH does, however, have jurisdiction to consider the issue of whether Petitioner satisfies the requirements to receive the HIS benefit afforded to FRS retirees.

At the final hearing, Petitioner testified, and did not offer the testimony of any other witness. DMS offered the testimony of Kathy Gould (DMS bureau chief of retirement calculations), and Jason Beard (DMS bureau chief of the contact center). Petitioner did not offer any exhibits into evidence. DMS Exhibits 1 through 15 were admitted into evidence.

A one-volume Transcript of the final hearing was filed with DOAH on February 9, 2021. Petitioner filed her Proposed Recommended Order (PRO) on February 11, 2021, and DMS filed its PRO on February 19, 2021. Each PRO was considered in preparing this Recommended Order.

FINDINGS OF FACT

1. In November 2011, Petitioner was hired by the Osceola County Sheriff's Office to work as a crossing guard. The Osceola County Sheriff's Office is an FRS-participating employer, and the position held by Petitioner was in the

² It is well established that issues related to subject matter jurisdiction can be raised at any time during the pendency of a proceeding. *84 Lumber Co. v. Cooper*, 656 So. 2d 1297 (Fla. 2d DCA 1994).

“Regular Class” of FRS membership. In 2011, newly hired eligible employees (members) of the Osceola County Sheriff’s Office were required to participate in either the FRS pension plan or the investment plan. Petitioner elected to participate in the investment plan.

2. Generally, the pension plan offers eligible employees a formulaic fixed monthly retirement benefit, whereas an employee’s investment plan benefits are “provided through member-directed investments.”

3. Pursuant to section 112.363, Florida Statutes, retired members of any state-administered retirement system will receive an HIS benefit if certain eligibility requirements are satisfied. Section 112.363(1) provides that a monthly subsidy payment will be provided “to retired members of any state-administered retirement system in order to assist such retired members in paying the costs of health insurance.”

4. Section 112.363(3)(e)2. provides that beginning July 1, 2002, each eligible member of the investment plan shall receive “a monthly retiree health insurance subsidy payment equal to the number of years of creditable service, as provided in this subparagraph, completed at the time of retirement, multiplied by \$5; ... [and] an eligible retiree or beneficiary may not receive a subsidy payment of more than \$150 or less than \$30.”

5. On July 18, 2019, Petitioner’s employment with the Osceola County Sheriff’s Office ended, and at that time she had 7.77 years of FRS creditable service.

CONCLUSIONS OF LAW

6. Subject to the limitations set forth in the Preliminary Statement, DOAH has jurisdiction over the parties to, and the subject matter of, this proceeding, pursuant to sections 120.569 and 120.57(1).

7. Petitioner contends that she is entitled to the health insurance subsidy offered to FRS retirees. Because Petitioner is asserting the affirmative of the

issue in this proceeding, she bears the ultimate burden to establish, by a preponderance of the evidence, eligibility to receive the subsidy. *Balino v. Dep't of HRS*, 348 So. 2d. 349, 350 (Fla. 1st DCA 1977)(unless otherwise established by statute, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal).

8. DMS is the state agency delegated the authority by the Legislature to administer the FRS pursuant to chapter 121, Florida Statutes.

9. Section 112.363(c) provides, in part, as follows:

Effective July 1, 2001, any person retiring on or after that date as a member of the Florida Retirement System, including a member of the investment plan administered pursuant to part II of chapter 121, must have satisfied the *vesting requirements* for his or her membership class under the *pension plan* as administered under part I of chapter 121. (emphasis added).

10. Section 121.021(45) provides that “‘Vested’ or ‘vesting’ means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date.”

11. Section 121.021(45)(b) provides that “[a]ny member enrolled on or after July 1, 2011, shall be vested in the pension plan upon 8 years of creditable service.” Petitioner was hired by the Osceola County Sheriff's Office in November 2011, and, based on her class of membership, is required to have eight years of FRS creditable service in order to satisfy the HIS duration of employment requirement.

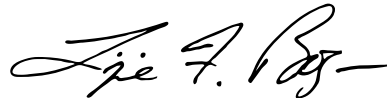
12. The requirements of section 112.363(c) clearly provide that FRS investment plan members must satisfy the “vesting requirements for his or her membership class under the pension plan” in order to receive the HIS.

Because Petitioner had not satisfied this requirement when she retired from FRS employment, she is not eligible to receive the health insurance subsidy.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of Retirement, enter a final order denying the application for retiree health insurance subsidy submitted by Mrs. Richards.

DONE AND ENTERED this 3rd day of March, 2021, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of March, 2021.

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.