BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
L.C.	)	OAH No. 21-2036-SBS
	)	Agency No. 2021-103

DECISION

I. Introduction

L.C. is a Department of Corrections ("DOC") employee who has asked to be enrolled in short-term disability insurance retroactive to her date of hire, even though she did not select that benefit at the time of hire. The Division of Retirement and Benefits ("Division" or "DRB"), which coordinates but does not fund this optional benefit, declined her request. Because she was not enrolled at the time of her hire, L.C. did not receive benefits during a subsequent childbirth-related disability.

L.C. requested a hearing on the Division's denial. The Office of Administrative Hearings (OAH) has jurisdiction over such hearings pursuant to AS 39.30.165, and it provided L.C. with a de novo evidentiary hearing on the matter on November 17, 2021.

The hearing showed that L.C. cannot be enrolled in this insurance product retroactively, and that the Division was not the party responsible for her failure to be enrolled at the time of her hire. L.C. did demonstrate that DRB was responsible for some confusion and delay in the processing of her request for retroactive enrollment, leading to understandable frustration on her part. None of that confusion or delay was causally related to her failure to obtain coverage, however. No relief is available to L.C. in this proceeding.

II. Facts

One of the statutory roles of the Division is to purchase a group insurance policy to be made available to most state employees on a voluntary basis, a policy that includes disability coverage.[1] The Division has purchased a policy with MetLife, from which employees can select various coverages—including short-term disability—as though selecting at a cafeteria.[2] Employees who opt for one or more of these coverages pay the whole cost of their premiums for the options they select, using pre-tax dollars.[3]

The policy operates under a set of rules set by the insurance contract with MetLife that are designed, among other things, to preserve the program's eligibility to be funded through pre-

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1 *See* AS 39.30.160(a).
2 Ricci Affidavit ¶ 7.
3 *Id.* ¶ 8.

tax dollars.[4] Under the rules, all employees can opt into the short-term disability plan during an "open enrollment" period that occurs at the end of each calendar year. Otherwise, employees can opt in only when certain special events occur in their lives or employment status. One such special event—and the only one that is relevant to this case—is being hired into a new position.[5]

L.C. began work for DOC on April 9, 2020. This was not her first state job; she had been hired twice before into state positions. But both of those hires were some years ago, when L.C. was at a different stage in life, and it would be reasonable for her to have forgotten the details of accessing benefit options at the time of hire. Moreover, it has not been established that the same benefits were offered in the same manner in the context of those hires.

L.C. contends that, when she started work for DOC, she was not informed orally or in writing of the option to enroll in the MetLife short-term disability policy. No evidence in this proceeding contradicts her claim, and for purposes of this decision it will be assumed to be true.[6] Conversely, no evidence in this proceeding indicates that the Division failed to meet any obligations surrounding L.C.'s hire. DRB has no involvement in the onboarding process for new employees in other parts of state government, and does not even know they have been hired until their post-hire benefit elections are received.[7]

L.C. became pregnant in the summer of 2020. In the fall of 2020, she learned from a coworker that, if she were enrolled in short-term disability, she could receive disability benefits relating to the pregnancy and childbirth. On November 4, 2020, L.C. telephoned the Division regarding the procedure for enrolling in short-term disability retroactive to the date of her hire.[8]

A key, undisputed fact in this proceeding is that if an employee has received medical services for being pregnant in the three months before being enrolled in short-term disability, the pregnancy is deemed a pre-existing condition under the MetLife policy and no benefits are subsequently payable in connection with that pregnancy or childbirth.[9] Thus, for practical purposes an employee needs to be enrolled in short-term disability before becoming pregnant in

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4 *See* R. 45-101; Ricci Affidavit ¶ 9.

5 *Id*. ¶¶ 14-15.

6 Some credence is added to the claim by L.C.'s personnel file, which contains signed acknowledgements of receipt of a informational items at the time of hire, but no acknowledgement relating to a briefing packet on supplemental benefit options. It is unknown whether such an acknowledgement form would ordinarily be in the file, however. DOC was not a party or witness in this proceeding, and its input on new employment orientation in general, or L.C.'s in particular, has not been received.

7 Ricci Affidavit ¶¶ 15-17.

8 R. 178-181.

9 *See* R. 72, 89-90. It appears that pregnancy is only treated as a preexisting condition if the mother has received prenatal care or consultation of some kind.

order to access the policy's benefits for pregnancy complications or postpartum leave. One must infer from the content of L.C.'s initial contact with the Division that she knew of this problem in November of 2020, and it was for this reason that she asked, from the outset, for retroactive enrollment rather than simply sign up for disability coverage in the upcoming open enrollment period.[10]

The DRB employee who spoke to L.C. on November 4, 2020 advised her to pursue retroactive enrollment through a "Letter of Consideration".[11] L.C. did submit such a letter later on November 4.[12] She wrote:

> I am writing to request to be retroactively enrolled into supplemental benefits. I began employment with the Department of Corrections in April, 2020, but was never notified or informed of this benefit and just recently became aware of it. In lieu of not being offered this benefit, I feel it appropriate to qualify upon learning of it.
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> I would like to be retroactively enrolled upon the original qualification time period through the remainder of the year, specifically for the short-term disability benefit. If accepted, I would like the total cost of this benefit to be spread out across the remainder of this year's pay checks.

After hearing nothing in response, L.C. followed up with a phone call six weeks later. The Division representative on the phone was not able to track down the Letter of Consideration, but told L.C. to expect a callback from the "disability team" in two or three business days.[13] There matters rested with respect to the Letter of Consideration for the next five months.

In the meantime, L.C. signed up for short-term disability coverage through open enrollment, effective prospectively from January 1, 2021. She delivered her baby in April 2021. She made a disability claim to MetLife, which was denied, in accordance with the policy, on the basis of preexisting condition.[14]

In mid-May of 2021, L.C. contacted the Division again to request action on her Letter of Consideration. This resulted in a formal denial of the request in the Letter of Consideration on May 21, 2021.[15] The short denial letter contained a somewhat unsatisfactory explanation for the denial, indicating that the Letter of Consideration could not be granted because pre-tax deductions to cover the premiums could no longer be taken from 2020 pay (2020 having ended

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10 The inference is drawn from R. 178-181. L.C.'s testimony was consistent with this inference.
11 R. 180.
12 R. 28.
13 R. 186-187.
14 *E.g.,* R. 33.
15 R. 25-26.

while the Division had the Letter of Consideration under advisement).[16] It did not offer L.C. appeal rights, but instead offered her the opportunity to request reconsideration.

Accordingly, on May 28, 2021 L.C. submitted a written request for reconsideration.[17] L.C. made a number of follow-up calls, during which was told that reconsideration could take 30 days.[18]

The Division denied the reconsideration request in a fuller letter on July 19, 2021.[19] This letter contained enough detail to show that the Division understood the factual claims in L.C.'s original Letter of Consideration, and explained that it was nonetheless denying her request for enrollment effective at the time of her DOC hire, relying on the rule that requires new hires to register their elections within 30 days of hire. It did not contend that the inability to go back and make pretax deductions in 2020 was a basis for the denial. It offered her an administrative appeal hearing at OAH.

L.C. filed a formal appeal on August 16, 2021.[20]

III. Discussion

As noted above, it is assumed for purposes of this proceeding that DOC failed to inform L.C.—at the time of her hire—of one of the benefits associated with her position: the option to select short-term disability coverage during a 30-day window after her hire. It is assumed that this is the reason that L.C. did not make an election and did not enroll at that time. There is no evidence, however, that the Division of Retirement and Benefits failed to do anything it was required to do at the time of L.C.'s hire, nor even that it was or should have been aware of the hire prior to the expiration of the 30-day window. There is likewise no evidence of error by MetLife.

The disability benefits at issue in this case are payable under a contract of insurance with MetLife. Like virtually any contract of insurance, this contract is set up to require employees to elect coverage in advance.[21] Practically speaking, to qualify for benefits under this policy, L.C.

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[16] The letter did not explain why L.C. could not simply make good the premium deficit using after-tax dollars. It is quite unlikely that any IRS rule, properly interpreted, would prevent that, if the only problem with eligibility for coverage were failure to deduct premiums. (Of course, in this case the fundamental problem was not failure to deduct premiums, but rather failure to make a timely election. The May 21 letter did not explicitly identify that problem.)

[17] R. 18-19.

[18] R. 208-209.

[19] R. 14-16.

[20] R. 3-4.

[21] Letting the insured obtain retroactive coverage invites a particularly asymmetrical form of "adverse selection," whereby consumers buy insurance after the fact if a covered event befalls them, but go bare if one does

needed to be covered in the summer of 2020, when she got pregnant. To be covered in the summer of 2020, she needed to elect coverage prior to that—during the 30-day enrollment period immediately after her hire.[22] That is the only way for her to be covered under this contract of insurance, and it did not occur. MetLife does not owe benefits under the contract, and there is no mechanism for the Division—whose only relationship with MetLife is contractual—to force it to do so.

The question then becomes whether DRB is financially liable to cover the lost benefits, that is, to pay the short-term disability payments that will not be coming from MetLife. As a legal matter, the answer is no. L.C. has not suggested, and OAH is unable to find, any statutory or regulatory basis for the Division to pay short-term disability benefits to any state employee.

Independent of legal authorization to make a payment, a state agency can sometimes be required to cover an obligation under an equitable doctrine. This is the doctrine of equitable estoppel, which can come into play when a state employee has reasonably acted in reliance on misinformation provided by DRB. To be able to recover under this doctrine, L.C. would have to prove each of the following elements:

> (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.[23]

If these four elements were present, the Division could be estopped to deny—that is, precluded by equity from denying—that the position it asserted was true, and it would have to live by that position. So, for example, if DRB had told L.C. in May of 2020, "You are covered by short-term disability insurance for the rest of this year" when, in fact, she had not made a proper election for coverage, it might be required to give her the benefits of coverage, even though MetLife itself would not have that obligation.[24] In this case, however, the first two elements are entirely missing.

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not. It can be difficult to make insurance economically viable if consumers are able to wager with the benefit of hindsight in this way, because the risk-spreading function of insurance is defeated.

[22] *See* R. 74-75. Note that if L.C. *had* elected coverage during the allowable period, but DOC or the Division or MetLife had not processed her election properly, benefits might be owed under the terms of the contract. This is not such a case, because no election was made.

[23] *Crum v. Stalnacker*, 936 P.2d 1254, 1256 (Alaska 1997) (applying estoppel against the government test in a Teachers' Retirement System case).

[24] There is some question whether an AS 39.30.165 appeal to the Commissioner of Administration would be the right procedural route for such an estoppel-based claim in the context of a supplemental benefit. That question need not be addressed here.

First, the Division never made any representations to L.C. that she was or would be entitled to coverage during the critical period in the summer of 2020. Nor did it provide any other kind of misinformation. It simply had no interaction with L.C. on this subject during the hiring period. L.C.'s own misunderstanding or lack of awareness stemmed from DOC's apparent failure to inform her.

Second, in making her error—failing to make a timely election—L.C. did not "rely" on anything the Division told her. Thus there was no reliance, reasonable or otherwise, on an assertion by the governmental agency that is a party to this case.

The only fault by DRB that has been demonstrated in this case is delay and poor communication after the fact. It took half a year to produce a response to the November 2020 Letter of Consideration, and the initial response was not well-reasoned. There was further delay in producing a decision in response to L.C.'s request for reconsideration. DRB has acknowledged these failures and directly and sincerely apologized for them at the hearing. While frustrating, however, none of this delay or confusion caused L.C. to lose a single dollar. The answer, had it been given in November of 2020 instead of July of 2021, would have been exactly the same. And L.C.'s subsequent conduct would have been the same as well.

In short, the Division was correct to deny coverage—by MetLife or by the Division itself—relating back to the time of L.C.'s hire. Does this mean there is no remedy for an employee who is not offered a benefit that is part of his or her compensation package, and who consequently fails to receive the value of that benefit? Not necessarily. But the remedy would not lie in an AS 39.30.165 administrative appeal within the Department of Administration. It would lie elsewhere—perhaps in a union grievance against the employer rather than the Division; perhaps in a court action against DOC.

L.C. points to the seeming unfairness of having been told in November 2020 that a Letter of Consideration was the right process for her, only to be told a year later that it will not yield the outcome she sought. The answer to this question is twofold. First, a Letter of Consideration *was* the right process to evaluate the precise relief L.C. seemed to be requesting: direct enrollment into the MetLife policy effective at the time of her hire. If L.C. had met the criteria for enrollment (*e.g.,* if she had made a timely election but the election had simply been lost somewhere in the bureaucracy), this would have been the route for fixing the problem. The fact that her remedy lies elsewhere occurs only because a full investigation revealed that she does not meet the criteria for coverage and that there was no fault or responsibility within DRB. Second,

since it was reasonable for L.C. to try this route first, time limits for addressing the issue by other avenues have likely been tolled.[25] If other avenues were available when she started down this route in November of 2020, they would probably still be available now.

IV. Conclusion

The Division's decision of July 19, 2021, rejecting L.C.'s November 4, 2020 Letter of Consideration, is affirmed.

DATED this 14th day of December, 2021.

By: *Signed*
Name: Christopher Kennedy
Title: Administrative Law Judge

Adoption

This Decision and Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 7th day of January, 2022.

By: *Signed*
Name: Christopher Kennedy
Title: Administrative Law Judge
Commissioner's Delegate

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

[25] *See Dayhoff v. Temsco Helicopters, Inc.,* 772 P.2d 1085 (Alaska 1989).