

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

SHANE BENGELSDORF,

Plaintiff,

CASE No.:

vs.

CITY OF DELTONA,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff, SHANE BENGELSDORF, (hereinafter "Bengelsdorf"), by and through his undersigned attorney, hereby files this suit against the Defendant, City of Deltona, (hereinafter "the City"), and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory judgment under Chapter 86, Florida Statutes, concerning a subject matter with a value greater than \$8,000.00 but less than \$50,000.00, exclusive of interest, attorney's fees, and costs.
2. Venue is proper in Volusia County because all the events giving rise to this action occurred within Volusia County, Florida.

PARTIES

3. The Plaintiff, Shane Bengelsdorf, is a resident of Volusia County, Florida and at all material times was an employee of the Defendant, working as a firefighter, as that term is defined in Section 112.1816(1)(c), Florida Statutes, for the City of Deltona's Fire Department.

4. The Defendant, City of Deltona, is a political subdivision of the State of Florida, operating under a Commission-Manager form of government, existing under the laws of the State of Florida and located within Volusia County, Florida.
5. At all times material hereto, the City of Deltona is and was an “employer” as that term is defined in Section 112.1816(1)(b) and Section 112.191(1)(a), Florida Statutes.

GENERAL ALLEGATIONS

6. Section 112.1816, Florida Statutes (hereinafter, the “Cancer Statute”) took effect on July 1, 2019.
7. Pursuant to the cancer statute:

Upon a diagnosis of cancer, a firefighter is entitled to the following benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer:

(a) Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.

(b) A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

Section 112.1816(2), Florida Statutes.

8. The term “cancer” includes:
 1. Bladder cancer.
 2. Brain cancer.
 3. Breast cancer.
 4. Cervical cancer.
 5. Colon cancer.
 6. Esophageal cancer.
 7. Invasive skin cancer.
 8. Kidney cancer.
 9. Large intestinal cancer.

10. Lung cancer.
11. Malignant melanoma.
12. Mesothelioma.
13. Multiple myeloma.
14. Non-Hodgkin's lymphoma.
15. Oral cavity and pharynx cancer.
16. Ovarian cancer.
17. Prostate cancer.
18. Rectal cancer.
19. Stomach cancer.
20. Testicular cancer.
21. Thyroid cancer.

Section 112.1816(1)(a), Florida Statutes.

9. The Plaintiff, Bengelsdorf, became employed with the City of Deltona's Fire Department on or about December 3, 2004 as a Firefighter/EMT.
10. Bengelsdorf has been continuously employed as a Firefighter/EMT for the City of Deltona since December 3, 2004.
11. Bengelsdorf was diagnosed with nodular and ulcerated basal cell carcinoma on or about February 23, 2024.
12. Bengelsdorf did not use tobacco products for at least the five years preceding his February 23, 2024 diagnosis of nodular and ulcerated basal cell carcinoma.
13. Bengelsdorf has not been employed in any other position in the five years preceding his February 23, 2024 diagnosis of nodular and ulcerated basal cell carcinoma which is proven to create a higher risk for any cancer.
14. Bengelsdorf's February 23, 2024 nodular and ulcerated basal cell carcinoma diagnosis is an "invasive skin cancer."
15. Over the past several years, Bengelsdorf has been treated on multiple occasions for invasive skin cancer.

16. Each of Bengelsdorf's invasive skin cancers have been located in a different position on his body.
17. Each time he has been diagnosed with a new invasive skin cancer, he has undergone treatment to have the cancer completely removed.
18. Bengelsdorf has submitted five claims under the cancer statute for his invasive skin cancer, all of which have been denied.

COUNT I
DECLARATORY JUDGMENT

19. Bengelsdorf realleges and incorporates Paragraphs 1 through 18 of this Complaint as if set forth in full herein.
20. This is an action for Declaratory Judgment filed pursuant to Chapter 86, Florida Statutes.
21. There is a bona fide, actual, and present dispute between Bengelsdorf and the City of Deltona regarding whether the City of Deltona is obligated to provide a \$25,000.00 payout and reimbursement of out-of-pocket expenses for Bengelsdorf's February 23, 2024 diagnosis of invasive skin cancer.
22. Specifically, there is a question as to whether the invasive skin cancer diagnosis of nodular and ulcerated basal cell carcinoma on February 23, 2024 is considered an "initial diagnosis" because it is located in a new area of the body that was not previously infected with skin cancer.
23. There is also a question as to whether multiple \$25,000.00 payouts are awardable under the cancer statute each time a different cancer diagnosis is rendered.
24. The parties are entitled to have this legal uncertainty surrounding a question of construction of the Statute resolved and adjudicated by this Court.

25. The parties have an actual, present, adverse, and antagonistic interest in the subject matter hereof.
26. The parties are entitled to a declaratory judgment declaring how the Statute affects the rights, status, or other equitable or legal relations of Bengelsdorf and the City of Deltona.
27. Bengelsdorf seeks a declaration that the cancer statute allows for a \$25,000.00 payout and reimbursement of out-of-pocket expenses for his February 23, 2024 diagnosis of nodular and ulcerated basal cell carcinoma because the February 23, 2024 diagnosis was not a continuation or regrowth of his prior skin cancer diagnoses, but rather a completely new diagnosis.
28. Bengelsdorf further seeks a declaration that multiple payouts of benefits under Section 112.1816, Florida Statutes are awardable with each new diagnosis of cancer.

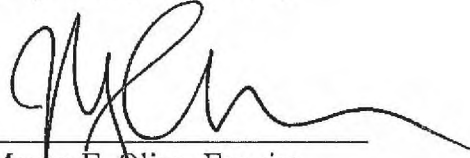
WHEREFORE, Bengelsdorf respectfully requests a declaratory judgment:

- a) declaring the City's obligations to Bengelsdorf under Section 112.1816, Florida Statutes;
- b) declaring that Section 112.1816, Florida Statutes allows for a \$25,000.00 payout and reimbursement of out-of-pocket expenses for Bengelsdorf's February 23, 2024 invasive skin care diagnosis;
- c) declaring that the City of Deltona is obligated to provide Bengelsdorf with a \$25,000.00 payout and reimbursement of out-of-pocket expenses for his February 23, 2024 invasive skin cancer diagnosis;
- d) declaring that multiple payouts of benefits under Section 112.1816, Florida Statutes are awardable with each new diagnosis of cancer;

- e) awarding Bengelsdorf the reasonable costs incurred in this action; and
- f) granting such other relief as this Court deems just and equitable.

DATED this February 4, 2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Oliva', with a long horizontal flourish extending to the right.

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