

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Marcus P's Diner Plus LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages

**Employer:** Marcus P's Diner Plus LLC, 47 Spindleback Ln, New Ipswich NH 03071

**Date of Hearing:** December 11, 2017

**Case No.:** 55343

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$357.50 in unpaid wages for hours worked during the final week of May 2017 as a cook for the employer.

Marcus P's Diner Plus LLC denies the claimant was an employee of the employer. The claimant performed work as a sub-contractor at his home, never as a cook in his restaurant.

**FINDINGS OF FACT**

The parties had a working relationship at some point in time in 2017. Neither party presented enough testimony or evidence to provide a conclusive determination as to the nature of that relationship.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than Marcus P's Diner Plus LLC. The claimant has the burden to prove that he was an employee of the employer and that he is owed the wages claimed. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story is only as credible as, not more credible than, Marcus P's Diner Plus LLC's. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed wages.

**DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is an employee of the employer and is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: December 28, 2017

Original: Claimant  
cc: Employer

MJD/nm