

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Chrysalis Recovery Center LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages
RSA 275:42 I/II employer/employee relationship

Employer: Chrysalis Recovery Center LLC, 112 S State St, Concord NH 03301

Date of Hearing: February 20, 2018

Case No.: 56358

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is an employee of the employer and is owed \$825 in unpaid wages for hours worked between September 9, 2017 and September 27, 2017. She argues these hours were spent teaching clients, as she had a separate role in the office for which she was paid for all hours worked. She further seeks liquidated damages.

Chrysalis Recovery Center LLC denies the claimant was an employee for the hours she spent as a teacher.

FINDINGS OF FACT

This Department must first to determine whether the claimant was an employee or an independent contractor for the IDEP teaching portion of her work.

RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner

by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The parties disagree as to the existence of an independent contractor professional agreement. Chrysalis Recovery Center LLC argues they had a signed agreement on file, however, they assert the claimant removed it from the premises without permission. The claimant argued she never signed an agreement and could not have removed it.

The Hearing Officer finds it is more likely than not that the claimant was at the very least familiar with the agreement, and in fact did sign the agreement. No finding is made on the current whereabouts of the contract or how it disappeared.

Nothing in the independent contractor professional agreement holds that the claimant was responsible for the satisfactory completion of work, and that she could be held contractually responsible for failure to complete the work.

Therefore, the Hearing Officer finds that the claimant was an employee of an employer, not an independent contractor, because the claimant does not meet the criteria in (f).

The claimant worked for the employer in two roles, one in the office for which she received all wages due and one as a IDEP instructor, for which she argues she is due \$825. She argues she worked the following hours at \$22 per hour:

- September 9, 2017 seven hours
- September 10, 2017 seven hours
- September 16, 2017 seven hours
- September 24, 2017 six and one half hours
- September 27, 2017 five hours

These hours total thirty two and one half hours, and with a rate of \$22 per hour, totals \$715. During the hearing, the claimant manipulated the number of hours worked, and finally acknowledged she may have made mistakes in her calculations.

The employer argues she did not work the hours she is now claiming. She did not agree to any hours worked as she argues the claimant did not text in and out for the hours worked. The employer was also aware the claimant left early on occasion, which the claimant denies.

The Hearing Officer does not find the claimant's testimony persuasive.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she performed work and was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as her story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that she is owed the claimed wages.

Because no wages are found to be owed, no liquidated damages can be awarded.

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 she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Date of Decision: March 7, 2018

Original: Claimant
cc: Employer