

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PMC Medical Group LLC

DECISION OF THE HEARING OFFICER

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

Employer: PMC Medical Group LLC, 7 Works Way, Somerworth NH 03878

Date of Hearing: April 16, 2018

Case No.: 56873

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$159,414 in unpaid wages for the period of October 2015 through November 2016, as he believes he did not receive his full payment on services rendered.

The company denies the claimant was not paid for all wages due. They assert that the claimant was paid, pursuant to his contract, documentation previously submitted, that he received payment on 60% of collected revenue. Further, they argue the contract depicts an independent contractor relationship.

The company provided a request for Finding of Fact at the hearing. The claimant was not aware he was allowed to present this type of request at the hearing. The hearing was left open until 4:30pm on April 18, 2018, for the claimant to submit a request for Finding of Fact. The claimant submitted the requested documentation within the required timeframe. However, he attempted to submit documentation that the Hearing Officer declined to accept at the hearing. This documentation was returned to the claimant as ex parte communication. This was not reviewed nor considered for this Decision.

FINDINGS OF FACT

The claimant worked for the company from October 2015 through November 2016. His initial relationship was with Pinewood Healthcare with a contract signed on October 22, 2015. The company changed names to PMC Medical Group LLC and the parties executed a new contract on February 4, 2016, signed by both parties. The signed contract outlines an independent contractor relationship, rather than an employer/employee relationship.

This Department must first to determine whether the claimant was an employee or an independent contractor.

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.

Nothing in either independent contractor agreements holds that the claimant was responsible for the satisfactory completion of work, and that he 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 argues he is due \$159,414 in unpaid wages on the billed amount of his services because it is the responsibility of the employer to collect the money owed, not his.

The employer argues the current written contract states, in relevant part, "Payment of 60% of collected revenues for services personally performed by Contractor for suboxone management." The prior contract reads, "Payment of 60% of collected revenues for: Suboxone Management..."

The employer provided documentation to show the claimant received the full 60% due on revenues collected.

The claimant's argument is that it is not his fault the employer did not collect the full amount billed on the services he rendered, so he should not suffer by loss of payment because they could not collect the balance. He also argues they acted fraudulently by stating that they have over a 98% collection rate when they wrote off more than \$140,000.

The claimant openly admits he has no idea how services are billed and how payments from insurance companies are handled.

The employer properly noticed the claimant, pursuant to RSA 275:49 and Lab 803.03, that he would receive 60% of collected revenues. He was paid 60% of all the revenues collected by the employer, documentation previously submitted.

The claimant appears to believe the employer is fraudulently writing off unpaid balances of his services rendered. The employer explained that they bill insurance companies for services rendered. The insurance company remits payments pursuant to the negotiated contract they have with the employer and the employer also collects the appropriate co-payments and deductibles from patients. These same contracts also prohibit the employer from collecting any remaining balance of the unpaid bill from the patient. The employer then writes off or adjusts any outstanding balance to zero, which is known in the industry as "balance billing." Once these balances are adjusted from the total billed, the employer shows a "collected rate" of 98.5%.

The claimant's argument that he should receive 60% of his billed services is not persuasive. The agreement clearly delineates he will receive 60% of collected revenues on his services rendered. Regardless of the reason any amounts are not collected, he still receives payment of 60% on the revenues collected.

The employer provided credible testimony and evidence that the claimant was paid all the wages to which he was entitled under both contracts for the period of October 2015 through November 2016.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages under the written notice of the employer.

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

Melissa J. Delorey
Hearing Officer

Date of Decision: April 26, 2018

Original: Claimant
cc: Employer
Employer's Attorney

MJD/nm