

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

[REDACTED]

**v.**

**Dr. Home Service**

**DECISION OF THE HEARING OFFICER**

**Appearances:** [REDACTED], Claimant

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

**Claimant:** [REDACTED]

**Employer:** Dr. Home Service, 955 Goffs Falls Road, Unit #5912  
Manchester, NH 03108

**Date of Hearing:** May 16, 2018

**Case No.:** 56944

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant worked for the employer from June, 2017 through July, 2017.

The current issue concerns worked performed by the claimant but unpaid by the employer. The claimant holds she is owed \$690.00 in wages for hours worked.

On the basis of the claimant's assertions she is owed unpaid wages she filed a Wage Claim with the Department on March 27, 2018; a Notice of Wage Claim was forwarded to the employer March 28, 2018. Hearing Notices were forwarded to the parties on April 26, 2018.

A formal hearing on this matter was scheduled for May 16, 2018 at the New Hampshire Department of Labor in Concord, New Hampshire. The employer did not appear for the hearing. After waiting fifteen (15) minutes with no response from the employer that he was delayed or running late, and in accordance with Lab Rule 203.04, the Hearing went forward with the testimony of the claimant.

**FINDINGS OF FACT**

The employer responded to an ad the claimant placed on Craigslist in which she was available for work with marketing skills. The claimant testified she may have responded to an advertisement the employer posted on Craigslist.

The parties met in early June, 2017 and came to a verbal agreement whereby the claimant would provide marketing for the business working part time; in turn the employer would compensate her at \$10.00 per hour and pay her monthly. Once the claimant began working she was given the additional responsibility of employee recruitment that included interviewing prospective candidates for the employer's business.

The claimant worked for the employer during June, 2017 and July, 2017. She ceased working for the employer when he failed to pay her for the work she had performed.

The claimant worked fifty (50) hours for the employer in June, 2017 and nineteen (19) hours in July, 2017.

The claimant made numerous attempts in an effort to be paid for the work she provided the employer.

The claimant testified she does not hold herself out to be in business for herself, she is not registered with the New Hampshire Secretary of State, her efforts to find work via the internet is limited to posting her resume.

Neither party submitted a contract.

## DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

Prior to determining whether or not wages are owed to the claimant, the issue of employee / employer relationship must be determined.

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: (emphasis this writer's).**

(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 claimant does not hold herself out to be in business for herself, she is not registered with the State of New Hampshire and did not incur any business liabilities while working for the employer; thus criterion (e) is not met.

There was no contract between the parties that would have held the claimant contractually responsible for satisfactory completion of any work she may have performed; thus criterion (f) is not met.

Therefore the claimant cannot be considered to be exempt from the definition of employee. Thus, for the purposes of this Decision, this Hearing Officer finds the claimant to be an employee.

RSA 275:43 I requires in-part that employers pay employees all wages due.

The claimant provided credible evidence and testimony that the employer has not paid her for fifty (50) hours of work she performed during the month of June, 2017 and for nineteen (19) hours of work she performed during the month of July, 2017. The total hours unpaid by the employer is sixty-nine hours (69) or fifty (50) + nineteen (19) hours. The wages due the claimant by the employer is \$690.00 or \$10.00 (her rate-of-pay) x 69 hours.

This Hearing Officer finds the claimant met her burden to prove by a preponderance of the evidence that she worked sixty-nine (69) hours for the employer and is owed wages from the employer in the amount of \$690.00.

## **DECISION**

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as the Department finds the claimant proved by a preponderance of evidence she is owed the claimed wages it is hereby ruled this Wage Claim is valid in the amount of \$690.00.

The employer is hereby ordered to send a check to the Department, payable to Stephanie Mann in the total of \$690.00 less applicable taxes, with a statement of such deductions within 20 days of the date of this Order.

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[REDACTED]  
Hearing Officer

Date of Decision: June 15, 2018

Original: Claimant  
Cc: Dr. Home Service, 955 Goffs Falls Road, Unit #5912  
Manchester, NH 03108  
Attention: [REDACTED]

[REDACTED]