

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Tricap Management, Inc.

Case No. 102768

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant did not appear
Attorney Craig Donais, employer
Kiya Purdie, Eileen Manlapaz, employer

NATURE OF DISPUTE: RSA 275:48 I – Withholding of Wages, Illegal Deductions
from Wages
RSA 275:48 II - Withholding of Wages, Employer Liability
for Lost Medical Insurance Benefits

DATE OF HEARING: August 24, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on June 21, 2022, alleging that he was owed \$4,730.22 for nine monthly deductions of \$525.58 for health care benefits. The wage claim notice issued June 22, 2022. The employer filed a response July 15, 2022. The claimant requested a hearing July 25, 2022 and the hearing notice issued July 28, 2022. The claimant requested a videoconference hearing.

The matter was scheduled for video hearing. The video invite was sent on August 19, 2022. The claimant did not appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the claimant at the address he provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the claimant received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the claimant, the hearing proceeded in his absence, consistent with administrative rule Lab 203.04.

The employer's representatives did appear via video and were advised that it was the claimant's burden to prove the allegations in his claim. They were further advised that employer was not required to present rebuttal evidence unless and until the claimant presented testimony or evidence in support of his claim.

The employer's representative declined to testify.

FINDINGS OF FACT

The following findings are based on matters of record in the Department file.

The claimant filed a wage claim on June 21, 2022, alleging that he was owed \$4,730.22 for nine monthly deductions of \$525.58 for dental and medical care benefits. No breakdown of the cost for each type of insurance was provided. The claimant worked for the employer from January 1, 2015 to May 31, 2022. The claimant failed to appear for the hearing.

Regarding dental coverage, the wage claim reads that the claimant's original dental insurance, Denex Dental, was terminated on August 3, 2021. The claimant incurred out of pocket dental expenses on November 15, 2021 and January 6, 2022 at the point of service when his dentist informed he was no longer covered by Denex.

The employer's submittal indicated that the claimant had received a certificate of creditable coverage indicating the claimant's dental coverage with Denex Dental was terminated on August 31, 2021. The employee payroll deduction authorization form from September 1, 2016 indicates that a bi-monthly deduction of \$262.79 was authorized. Of the \$262.79, \$42.01 per pay period was for Denex Dental. These are premiums associated with insurance for the claimant's spouse.

The carrier's submittal indicates that the claimant was covered by *Delta Dental* September 1, 2021. However, no documentation or proof of coverage was submitted. The claimant did submit proof that out of pocket dental expenses were incurred for his spouse on November 23, 2021 and January 6, 2022 in the amount of \$227.00.

A March 22-23, 2022 e-mail chain was submitted by the employer which indicates the employer knew that the claimant had incurred out of pocket dental expenses and discusses whether the employer's new dental insurance through *Delta Dental* would reimburse the claimant. The claimant submitted documentation of \$227.00 in out of pocket dental expenses.

Regarding medical coverage, the wage claim reads,

"I received a letter from CareFirst Ins. in 3/2022, stating our insurance was terminated on 2/28/2022. Again we were never told by Tricap, but they continued taking the insurance deduction from my paycheck for 9 months. I spoke with multiple people in the company about this and was told we did have insurance and we could use it."

The claimant submitted letters dated March 12, 2022 and April 16, 2022 from CareFirst informing him of the February 28, 2022 termination date. The claimant submitted an e-mail from CareFirst Customer Service dated March 25, 2022 informing the claimant that his medical coverage was terminated March 1, 2022. The claimant submitted text messages from April 15 -18, 2022 between himself and Kiya Purdie of Tricap in which the employer acknowledges the claimant's medical coverage had in fact been terminated. The claimant requested reimbursement via text message on April 18, 2022 for premiums paid while the coverage was cancelled.

The claimant submitted an e-mail from the same CareFirst Customer Service representative dated April 20, 2022 informing the claimant that his medical policy is eligible for coverage. The claimant submitted a text message he sent to Jeff Scott of Tricap on May 26, 2022 asking when he can expect to receive reimbursement for premiums paid while the coverage was cancelled.

The employer submitted a July 7, 2022 e-mail from the employer to the employer's insurance broker which reads in relevant part,

"As our broker your company agreed to place us with the appropriate carrier to provide health and dental coverage. If the companies you placed us with failed to provide that coverage as alleged, we expect representation on our behalf with said carriers. *Please contact the appropriate carriers and have them provide proof that coverage never lapsed.* I would prefer not to forward to our legal team for action against your company as our broker" (emphasis added).

The employer submitted a July 14, 2022 letter from CareFirst responding to the claimant's July 14, 2022 written request for a certificate of creditable coverage. The letter indicates the claimant had medical insurance through CareFirst from January 1, 2015 through May 31, 2022.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he was owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

RSA 275:48 I provides that employers may withhold a portion of an employee's wages for medical insurance benefits when the employee has given his or her written authorization and deductions are duly recorded.

RSA 275:48 II provides, in pertinent part,

"If an employer making a deduction of an employee's wages under paragraph I fails to make any payment relative to such deduction on the employee's behalf, and such employee loses any benefit or fails to meet an obligation caused by such failure, the employer shall be liable for such lost benefit or failed obligation... The employer shall also be liable for any cost incurred by the employee caused by the employer's failure to make such payments."

The claimant's dental insurance was terminated August 31, 2021. There is no proof that the claimant was covered on September 1, 2021. The evidence submitted by the claimant indicates that the Denex Dental coverage was terminated on August 31, 2021. The premiums for Denex Dental in the amount of \$42.01 continued to be deducted from the claimant's paycheck. The employer's testimony that the claimant's coverage was transferred to Delta Dental is not supported by the evidence. Specifically

there is no proof the claimant had dental insurance after August 31, 2021. From the claimant's submission it is clear that he occurred out of pocket dental expenses due to being uninsured.

A review of the documentation demonstrated that there was initial concern that the claimant's medical insurance was terminated February 28, 2022. However, the insurance carrier has provided documentation of coverage without a lapse. The July 14, 2022 insurance letter indicates that there was no lapse in coverage. The carrier backdated the insurance. The claimant's employment ended May 31, 2022. The claimant did not appear at hearing to refute the evidence presented by the employer.

In this case the employer deducted dental insurance premiums from the claimant's wages while the claimant was denied dental insurance coverage. This also resulted in the claimant incurring out of pocket dental expenses which should have been covered by the insurance premiums he paid.

In this case the employer deducted medical insurance premiums from the claimant's wages for two months while the claimant was denied medical insurance coverage. The claimant lost insurance benefits while paying for them. The deduction for dental insurance were \$84.02 per month. The claimant was uninsured from September 2021 to May 2022. Nine months of premiums were deducted in the amount of \$756.18. Additionally, the claimant occurred \$227.00 in out of pocket dental expenses due to the lapse in coverage.

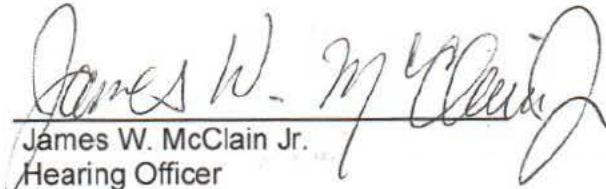
It is found that the claimant is entitled to reimbursement for 9 months of dental insurance premium deductions of \$756.18 and \$227.00 for out of pocket dental expenses. The total amount of the check shall be \$983.18.

DECISION

After a review of the evidence, it is found that the employer withdrew premiums for Denex Dental after the coverage terminated on August 31, 2021. The claimant is entitled to reimbursement of the premiums and out of pocket dental expenses incurred in the amount of \$983.18.

The employer is ordered to send a check to this Department payable to ██████████
██████████ in the amount of \$983.18 within 30 days of the date of this order.

September 21, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd