

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Genesis Health Care

Case No. 103184

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant
Employer failed to appear

NATURE OF DISPUTE: RSA 275:48 – Withholding of Wages, Illegal Deductions
from Wages

DATE OF HEARING: September 20, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 29, 2022, alleging that he was owed \$1,191.54 for unauthorized health from August 8, 2020 to October 17, 2020. The wage claim notice issued August 1, 2022. The employer failed to respond. The claimant requested a hearing August 18, 2022 and the hearing notice issued August 22, 2022.

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

FINDINGS OF FACT

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

The employer is a nursing home in North Conway, NH. The claimant is a 62 year old resident of Ossipee, NH. The claimant was a bus driver for the employer for 7 years, resigning on July 20, 2022. The claimant filed a wage claim on July 29, 2022, alleging that he was owed \$1,191.54 for unauthorized health insurance deductions from August 8, 2020 to October 17, 2020. The wage claim notice was sent to Linda Rollins, the employer's Human Resources director.

The claimant requested the insurance deductions end after he provided the employer with proof of alternative health insurance coverage. The claimant submitted an e-mail from Linda Rollins dated July 29, 2020 in which Ms. Rollins references the form needed to end the insurance deductions and requests that the claimant provide proof of his new insurance coverage. The claimant testified he submitted the completed form and proof of his new insurance coverage on or around July 29, 2020 but that the deductions continued. The claimant submitted a text message from Linda Rollins dated October 14, 2020 in which she informs him that the insurance deduction were ended October 14, 2020.

The claimant provided documentation of the deductions at hearing. The employer deducted \$226.52 for health insurance and \$25.98 for dental for the weeks ending August 8, 15 and 22, 2020. Beginning the week ending September 5, 2020 through the week ending October 10, 2020 the employer deducted \$73.14 for health insurance and \$25.98 for dental.

The total deduction for health insurance was \$1,191.54. The total deduction for dental insurance was \$259.80. The claimant testified the employer reimbursed him for the dental premiums deducted but has not reimbursed him for the health insurance deductions.

At that point the hearing was concluded.

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."

In this case the claimant requested that his insurance deductions be ended on or around July 29, 2020. The deductions continued until October 10, 2020. The employer was aware of the claimant's request to end the deductions. The employer reimbursed

the claimant for his dental insurance premiums but failed to reimburse his health care premiums from the date of his request until the present, a period of more than 2 years.

The employer failed to respond to the wage claim and hearing notices. Therefore, there is nothing to counter or rebut the claimant's testimony and documentation.

It is found that the claimant is entitled to reimbursement for health insurance premium deductions of \$1,191.54.

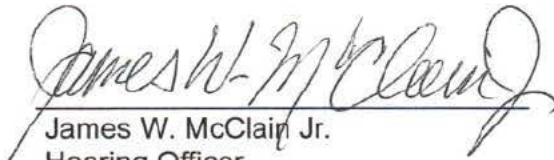
DECISION

After a review of the evidence, it is found that the employer deducted health insurance premiums after the claimant requested the deductions end. The claimant is entitled to reimbursement of the premiums in the amount of \$1,191.54.

The wage claim is found to be **valid**

The employer is ordered to send a check to this Department payable to ██████████ ██████████ in the amount of \$1,191.54 less any applicable taxes within 30 days of the date of this order.

October 6, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd