

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

Ascentria Care Alliance
Case No.: 61898

DECISION OF THE HEARING OFFICER

Appearances: █ Claimant

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages

Employer: Ascentria Care Alliance- Failed to Appear

Date of Hearing: November 4, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages due to him. Specifically, the claimant asserts that he is owed \$4,500.00 for unpaid wages from April 5, 2020 to June 6, 2020.

The claimant filed a Wage Claim with the Department on January 5, 2021. The wage claim was forwarded to the employer. The employer failed to respond. The claimant requested a hearing on this matter be scheduled.

Even though the employer failed to file an objection to the claim, the employer did contact the Department in the spring of 2021 looking for information on the claim. The contact information for the employer provided to the Department of Labor was Lori Dexter, HR Director. Ms. Dexter communicated with the Department concerning appearing via telephone. The initial telephonic hearing in the matter was continued. The matter was rescheduled multiple times. The Department resumed in person hearings in July 2021. The September 30, 2021 hearing notice, for the November 4, 2021 hearing, indicated that the hearing was in person at the Department of Labor. It was mailed to Ms. Dexter and the claimant.

On November 4, 2021, the hearing was scheduled for 10:15am. The claimant appeared on time for the hearing. The employer failed to appear. Given the prior communications with the employer, telephonic contact was attempted for Ms. Dexter. Ms. Dexter failed to appear in person and failed to be available by phone. After waiting 15 minutes as required by administrative rules, the hearing proceeded in the employer's absence.

FINDINGS OF FACT

The claimant was employed as a personal care assistant (PCA). In this capacity, the claimant resided with his client and provided 40 hours of PCA assistance. The claimant asserts that he was paid \$13.00 per hour.

The claimant asserts that from April 5, 2020 to June 6, 2020 the employer refused to pay him for his PCA services. The claimant was informed by the employer that they would not pay him due to an ongoing investigation regarding a 911 call/ BES complaint. Despite being informed by the employer that they had placed him on unpaid leave pending the investigation, the claimant continued to reside with his client and provide the client with PCA assistance.

The employer reinstated the claimant on June 6, 2020 after the claimant informed the employer that the BES complaint was found to be "unfounded".

The Department's record includes the following information from the employer. This information was received via email. The claimant was copied on the email.

Thank you for the below information. I am prepared to attend the hearing on June 1. The employee was suspended from work without pay. He was living with the client as was arranged through a family member, but he was not hired as a live-in PCSP by Ascentria Care Alliance. Therefore he was not required to provide work as the living arrangement were separate from his employment.

Thank you-

The email was sent from Ms. Dexter.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he 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.

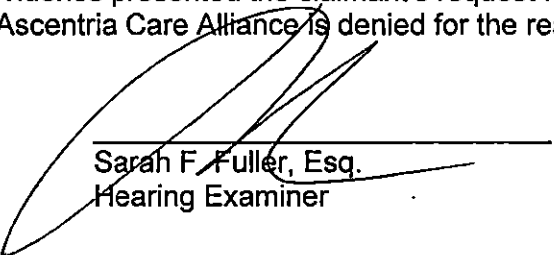
The claimant was a credible witness. It is uncontested that he remained the client's PCA from April 5, 2020 to June 6, 2020. The claimant acknowledged that he was performing these services for his client because he remained living in the residence. The claimant acknowledged that the employer had told him that he was on unpaid leave pending resolution of the BES complaint. The claimant also acknowledged that his client and his client's family were aware that he was not being paid by the employer.

The claimant's claim for wages during this two month time period is misplaced. He does not have an actionable claim against the employer. The employer suspended him without pay. His employment with the employer did not require that he reside with the client. This was an arrangement made by the family. The family of the client allowed the claimant to stay in residence with the client. The client and family allowed the claimant to continue to perform PCA services from April 2020 to June 2020 knowing he was not being paid by the employer. The claimant's employer during this two-month

period, after he had been put on unpaid leave, would be the client and his family who hired him to perform these services during this time period.

DECISION

Based on the testimony and evidence presented the claimant's request for unpaid wages against the employer, Ascentria Care Alliance is denied for the reasons stated above.



Sarah F. Fuller, Esq.
Hearing Examiner

Date of Decision: November 29, 2021

Original: Claimant
cc: Employer

SFF/cb