

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 18-2025
OF SHAWNA DAVIS,	)	
	)	
Claimant,	)	
	)	
vs.	)	<b>AMENDED</b>
	)	<b>FINAL AGENCY DECISION</b>
	)	
SAMMONS ENTERPRISES, INC.	)	
d/b/a 2 GRANDMA’S HOUSE,	)	
	)	
Respondent.	)	

\* \* \* \* \*

On March 11, 2025, the Wage and Hour Unit of the Montana Department of Labor and Industry notified the Hearing Officer that a payment in this matter was received on May 3, 2024, which was the same date as the appeal. Receipt of payment was not properly included in the administrative record and was thereby not taken into the Hearing Officer’s consideration when issuing the Final Agency Decision on February 4, 2025. Payment was received in the amount of the underlying department determination. The Hearing Officer issues this Amended Final Agency Decision to account properly for the payment that was received.

**I. BACKGROUND**

On August 5, 2023, Claimant Shawna Davis (Davis) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Respondent Sammons Enterprises, Inc. d/b/a 2 Grandma’s House (2 Grandma’s House) owed her \$1,650.00 in unpaid wages for work performed during July 16, 2023, to July 31, 2023.

On April 18, 2024, the Wage and Hour Unit issued a determination finding 2 Grandma’s House owed Davis a total of \$1,218.48 in unpaid wages and associated penalties. Mandatory mediation was unsuccessful, and 2 Grandma’s House appealed. On July 5, 2024, the matter was transferred to the Office of Administrative Hearings.

The Hearing Officer issued a Scheduling Order on July 19, 2024, setting dates and deadlines for the matter including a deadline of November 4, 2024, for the parties to file their final exchanges. The final exchanges included: (1) lists of final contentions; (2) lists of exhibits and witnesses; (3) copies of exhibits which a party intends to introduce at the hearing; (4) requests for the

issuance of subpoenas, only for the purpose of attendance of witnesses at the hearing; and (5) proposed stipulated facts. The Scheduling Order also placed the parties on notice that the Hearing Officer “may refuse to admit exhibits not timely listed and exchanged and may refuse to allow testimony from witnesses not timely identified.” On November 4, 2024, Davis filed her final exchanges, but she did not disclose that she would testify. On November 4, 2024, 2 Grandma’s House did not file its final exchanges.

On November 13, 2024, the Hearing Officer held a final pre-hearing conference in this matter with Davis and attorney Michelle Vanisko (Vanisko), counsel for 2 Grandma’s House, in attendance. Vanisko indicated she did not file 2 Grandma’s House’s final exchanges due to a server problem she experienced that she was not aware of until November 8, 2024. The Hearing Officer was not made aware of technical problems with the final exchanges until November 13, 2024, at which time Vanisko requested exhibits and witnesses be considered as part of its final exchanges. Pursuant to the Scheduling Order, the Hearing Officer ruled during the final pre-hearing conference that 2 Grandma’s House’s requested exhibits and witnesses would not be permitted at the scheduled contested case hearing, because they were not timely provided. The Hearing Officer clarified that 2 Grandma’s House may cross-examine Davis’s witnesses.

On November 18, 2024, the Hearing Officer convened a contested case hearing in this matter via Zoom video conference. Davis represented herself. Vanisko represented 2 Grandma’s House. Pamela Michaela Sammons (Sammons) appeared as the designated representative of 2 Grandma’s House. Before the hearing began, the Hearing Officer heard objections from 2 Grandma’s House regarding two proposed witnesses of Davis’s. These witnesses included Sophie Lucas (Lucas) and Amy Minikey (Minikey). 2 Grandma’s House objected to the proposed testimony of Lucas and Minikey on the basis that they were not present at 2 Grandma’s House during the timeframe in question and thereby had irrelevant information to relay. In response, Davis confirmed that Lucas’s and Minikey’s intended testimony was to support the fact they also had wage claims against 2 Grandma’s House as well and had no personal knowledge of what happened regarding Davis’s work. The Hearing Officer ruled that Lucas and Minikey would be excluded from testifying given their lack of personal knowledge.

2 Grandma’s House also objected to Davis testifying since she did not disclose she would be doing so in her final exchanges. When asked, Davis indicated she did not intend to testify but upon further discussion indicated she desired to provide testimony. The Hearing Officer ruled that both Davis and Sammons would be permitted to testify given that they are the parties involved with the claim, even though neither was properly disclosed. Finally, 2 Grandma’s House requested the Hearing Officer conduct an in-camera review of the sign-in sheets from 2 Grandma’s House for the timeframe in question.

Davis objected to the in-camera review request. The Hearing Officer granted the request and admitted Exhibits A-I under seal for review.

At hearing, Davis testified for her case-in-chief, as well as Lali Lawrence, Paige Bowsher, Floyd Juza (Juza), Victoria Ward, and Bobbi Parks (Parks). Sammons testified on behalf of 2 Grandma's House. The Hearing Officer permitted 2 Grandma's House to call a rebuttal witness, Allison Hilbert, based on testimony presented in Davis's case-in-chief. The parties agreed the administrative record, with documents numbered 1-148, would be admitted with no objection. The parties also stipulated to admission of Davis's proposed Exhibits 201-210, 214, and 216-218. Davis's proposed Exhibits 200 and 219 were not admitted since they concerned information from Lucas and Minikey who were not permitted to testify. Based on objections from 2 Grandma's House, Davis's proposed Exhibits 211-213 and 220-221 were not admitted because they lacked foundation and were hearsay. Davis's proposed Exhibit 215 was not admitted based on a lack of foundation.

2 Grandma's House requested to undertake post-hearing briefing, while Davis did not. The Hearing Officer denied 2 Grandma House's request for post-hearing briefing and deemed the matter submitted at the close of the hearing. Based upon the evidence and argument adduced at hearing, the Hearing Officer makes the following findings of fact, conclusions of law, and final agency decision.

## **II. ISSUE PRESENTED**

Whether 2 Grandma's House owes wages to Davis for work performed.

## **III. FINDINGS OF FACT**

1. 2 Grandma's House is a daycare.
2. Davis was employed at 2 Grandma's House as its director. Davis typically worked Monday through Friday, 7:00 a.m. to 4:00 p.m. Davis was paid \$1,650.00 semi-monthly.
3. Sammons is the owner of 2 Grandma's House.
4. In June 2023, Davis was due to deliver her second child. On June 17, 2023, Davis began her two-week paid maternity leave. Davis was to return to work on June 30, 2023.
5. Per a verbal agreement, Sammons permitted Davis two additional weeks of paid maternity leave on June 28, 2023.
6. Davis returned to work on July 17, 2023. Sammons disputes this occurred. Sammons asserted that Davis was not working at 2 Grandma's House from July 17 through July 28, 2023. Sammons further indicated that if

Davis was present, it was to show off her new baby and visit. Sammons indicated that Davis desired an additional two weeks of maternity leave until the end of July 2023. Sammons could not pay Davis for that leave.

7. Sammons used a program called uAttend to track an employee clocking in and out, or submitting punches, for a shift.

8. Davis believed she clocked in and out for the week of July 17, 2023, and the week of July 24, 2023.

9. Despite the fact that Davis believed she clocked in and out for the week of July 17 and 24, the uAttend timecards do not show Davis clocking in or out between July 17, 2023, through July 28, 2023. The uAttend timecards indicate that no adjustments were made.

10. A uAttend representative indicated that time punches cannot be deleted and that punches for other people existed for the timeframe between July 17 through July 28, 2023. Davis's name is not associated with any punches for that timeframe.

11. The uAttend timecards were submitted from uAttend to Sammons and were not altered by Sammons.

12. Parents are required to sign in and sign out their children.

13. Davis's child was present at the daycare during the time she was working between July 17 through July 28, 2023, but she forgot to sign her child in except for on July 25, 2023.

14. On July 25, 2023, the sign-in sheet shows that Davis's child was signed in at 6:56 a.m.

15. The sign-in sheets were not altered. They show a different name than 2 Grandma's House on top because the person covering for Davis while she was on maternity leave could not find the sheets that Davis had prepared. The name said 2 Grandma's Daycare.

16. Between July 17 through July 26, 2023, Davis did a variety of tasks upon her return to work, including catching up on paperwork and conducting interviews.

17. The record contains evidence that Davis received an auto-generated email at 12:25 a.m., the morning of July 17, 2023, from a public entity to update her "Organization Profile." The time that email was sent is not relevant to this matter.

18. On July 17, 2023, at 11:02 a.m., Davis responded to a text from Parks, Davis's mother-in-law, asking how the children were doing at daycare.

19. On July 17, 2023, at 12:23 p.m., Davis texted her husband that she was happier being back at work.

20. On July 17, 2023, at 2:10 p.m., Juza, a father whose children attended the daycare, texted Davis asking about how his daughter was doing. Davis responded that Juza's daughter was a little sad in the morning but was a lot happier now.

21. On July 18, 2023, at 7:40 a.m., Davis texted Sammons about carrots being needed for lunch.

22. On July 18, 2023, at 10:48 a.m., Davis texted Parks about Parks taking Davis's child to an appointment at 1:30 p.m., since Davis needed to "stay here" for training. Parks picked up Davis's child that day. Sammons indicated that training did not occur because having such training would have violated the 4:1 teacher to child ratio.

23. On July 18, 2023, at 11:08 a.m., Juza texted Davis that it was a pleasure meeting her. Davis responded.

24. On July 18, 2023, at 3:23 p.m., Juza texted Davis asking how his daughter was doing. Davis responded that she was going good and was very happy.

25. On July 18, 2023, at 4:19 p.m., Davis texted Sammons asking if she could "come over real quick."

26. On July 19, 2023, at 11:14 a.m., Juza texted Davis indicating that his children had a dentist appointment so he was going to get them at 1:00 p.m. and drop them back off at 4:00 p.m. Davis responded at 12:14 p.m. that Juza's plan sounded good.

27. On July 20, 2023, at 1:47 p.m., Davis texted Sammons about coming over and talking for a few minutes. Davis further indicated in the text to Sammons that if Sammons' head was hurting, they could talk tomorrow or next week.

28. On July 21, 2023, at 11:35 a.m., Davis sent images of screenshot payroll information to Sammons. The information is scribbled out.

29. On July 24, 2023, at 10:14 a.m., Davis texted Sammons asking for Sammons not to yell at her because Davis was on Sammons' side. Davis's text references a staff meeting that occurred on Friday (July 21, 2023) afternoon. Sammons indicated that a staff meeting did not occur on July 21, 2023.

30. On July 25, 2023, at 6:41 p.m., Juza texted Davis asking about an incident that occurred at the daycare regarding one of his daughters. Davis responded asking when the incident occurred.

31. On July 25, 2023, Davis responded to Juza's text that Juza's daughter was upset at nap time, that Davis talked to his daughter, and that Davis would talk to the other teachers to see what happened. Davis further

indicated that she would keep an eye on her “tomorrow” to try to see what was going on.

32. On July 26, 2023, at 8:36 a.m., Davis texted Juza that Davis talked to the other teachers. Davis also indicated that both his daughters needed to be picked up since one of them was sick.

33. On July 26, 2023, at 10:12 a.m., Davis texted Sammons that “Interview is here if you want to come discuss pay.”

34. Sammons indicated that Sammons brought carrots to the daycare; that Sammons was present at the daycare; and that Sammons could not recall being asked to come over to talk to Davis for a few minutes.

35. Davis quit working at 2 Grandma’s house on July 28, 2023, at 6:01 p.m., having provided a text message to Sammons. Davis started working a new job on July 31, 2023.

36. On May 2, 2024, 2 Grandma’s House submitted payment to Davis in the amount of \$796.19, which represents \$1,218.48-\$422.29 in withholdings. 2 Grandma’s House also submitted \$182.77 in penalty.

#### **IV. DISCUSSION<sup>1</sup>**

##### **A. Montana Wage Payment Act Requirements**

The Montana Wage Payment Act obligates an employer to pay the wages earned by an employee. See Mont. Code Ann. § 39-3-204(1) (“every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee”). “Wages” include “any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly[.]” Mont. Code Ann. § 39-3-201(6)(a). An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Garsjo v. Department of Labor & Industry*, 172 Mont. 182, 562 P.2d 473 (1977). To meet this burden, the employee must produce evidence to show the extent and amount of work as a matter of just and reasonable inference. *Garsjo*, 172 Mont. at 189, 562 P.2d at 476-477; See also *Marias Healthcare Servs. v. Turenne*, 2001 MT 127, ¶¶ 13, 14, 305 Mont. 419, 28 P.3d 491 (holding the lower court properly concluded the plaintiff’s wage claim failed because she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Once an employee has shown as a matter of just and reasonable inference that she is owed wages, “the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the

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<sup>1</sup> Any statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece*, 110 Mont. 541, 105 P.2d 661 (1940).

evidence of the employee, and if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee,” even though the amount is only a reasonable approximation. *Garsjo*, 172 Mont. at 189, 562 P.2d at 477. As the Montana Supreme Court has long recognized, it is the employer’s duty to maintain accurate records of hours worked, not the employee’s. *Smith v. Tyad, Inc.*, 2009 MT 180, ¶ 46, n.3, 351 Mont. 12, 209 P.3d 228.

The law regarding hours worked is that those hours include “all time during which an employee is suffered or permitted to work whether or not he is required to do so.” Admin. R. Mont. 24.16.2524 (2023).<sup>2</sup> If an “employer knows or has reason to believe that [an employee] is continuing to work [then] the time is working time.” 29 C.F.R. § 785.11. An employer who is armed with knowledge that an employee is working “cannot stand idly by” and allow an employee to perform work without proper compensation. *Forrester v. Roth’s I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981).

## **B. The Parties’ Arguments**

Davis argues that she worked at 2 Grandma’s House from July 17 through July 28, 2023. Davis contends the evidence and witnesses prove that on July 17, 2023, she returned to work after her maternity leave. Davis continues that a uAttend representative could see punches on the electronic uAttend timecard program between July 17 through July 28, 2023, so she questions why her timecards submitted by 2 Grandma’s House do not show the punches. Davis requests that she get paid for the last two weeks she worked at 2 Grandma’s House, by taking into consideration the financial hardship she sustained, the witness testimony, and the evidence submitted.

2 Grandma’s House contends this is a case of documentation versus verbal testimony. According to 2 Grandma’s House, the documented evidence shows what transpired in this matter, and that it need not produce information since no such further documentation exists; and that Davis did not work between July 17 through July 28, 2023, at the daycare. Specifically, 2 Grandma’s House argues the uAttend representative’s indication that timecard punches existed for the timeframe between July 17 through July 28, 2023, does not evidence that Davis was working. Rather, 2 Grandma’s House asserts the evidence shows punches exist for the timeframe between July 17 through July 28, 2023, but Davis’s name is not associated with those punches, so she could not have been working. 2 Grandma’s House argues the uAttend timecard evidence shows that Davis was not working because the timecards were not altered; timecard punches cannot be deleted; and no punches exist for Davis between July 17 through July 28, 2023. 2 Grandma’s House contends that Davis was religious in punching her time in and out. Moreover, 2 Grandma’s House argues that the sign-in sheets do not show Davis’s child at the daycare, except one day, which coincides with Davis visiting and not working. 2 Grandma’s House contends that Davis’s testimony changed since

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<sup>2</sup> To avoid duplication of administrative rules, this administrative rule was removed since it is contained within the CFR. See 2024 MAR p. 474, Eff. 3/9/24.

she indicated during the department's investigation that she signed in her child and argued the sign-in sheets were altered. The sign-in sheets could not be altered, according to 2 Grandma's House, since doing so would require obtaining the signatures of all the parents on the sheets for the two weeks in question.

2 Grandma's House continues that witnesses were untruthful while testifying, including Juza who indicated that he had conversations with Davis about his children at the daycare after Davis was no longer working at the daycare. 2 Grandma's House argues that Juza's text messages underscore a fact not in dispute, and that fact was Davis showed up at the daycare on occasion during the weeks of July 17 through July 28, 2023, to visit with her friends and to show off her newborn baby. 2 Grandma's House contends that Davis and Juza had continuing communication after she quit working at 2 Grandma's House, with her communication to him being done in an attempt to prove a wage claim. 2 Grandma's House argues why Davis's other witnesses are not credible, including that the witness either did not or could not see Davis working; the witness mistook Davis for another employee; or the witness is a friend of Davis's. 2 Grandma's House continues that many of the work-related messages sent by Davis are after Davis testified she would have clocked out for the day. Those messages are explained, according to 2 Grandma's House, by employees reaching out to Davis while she was off, which was a practice Sammons had previously discussed with her employees not to do. Additionally, 2 Grandma's House argues that Davis could not have been working at 12 a.m. in the morning when she received one text.

Finally, 2 Grandma's House contends that Davis spent the time between July 17 through July 28, 2023, looking for and interviewing for a new job, which Davis started on July 31, 2023. 2 Grandma's House calls into question Davis's testimony since she could not remember why she did not quit before 6:00 p.m. on July 28, 2023, while she remembered in detail all the work she allegedly performed at the daycare in the weeks leading up to that day. 2 Grandma's House argues that Davis did not quit until 6:00 p.m. on July 28, 2023, because Davis was not at the daycare that day, which explains why Davis had to return later to turn in her keys and grab her children's belongings.

### **C. Analysis of Wages Owed**

The Hearing Officer begins the analysis in this matter with the uAttend timecards and the sign-in sheets. The uAttend timecards do not show timecard punches for Davis between July 17 through July 28, 2023. The Hearing Officer finds that the uAttend timecards have not been altered in this regard, because the uAttend timecards themselves indicate that no adjustments have been made. In addition, while the uAttend representative indicated that timecard punches existed between July 17 through July 28, 2023, that indication is not evidence Davis worked during that timeframe. No evidence exists that Davis's name is associated with uAttend punches for that time frame. The Hearing Officer also finds that the sign-in sheets have not been altered, because the difference in the naming convention used on the



sheets was explained and Davis did not present evidence of alteration. The sign-in sheets do not show that Davis's child was signed in, except on July 25, 2023. Davis, as an employee of 2 Grandma's House, is seeking unpaid wages and, as such, bears the burden of proving work performed without proper compensation. *Garsjo*, 172 Mont. at 189, 562 P.2d at 476-477. To meet this burden, Davis must produce evidence to show the extent and amount of work performed as a matter of just and reasonable inference. *Id.* As the following details, Davis met this initial burden.

Despite the uAttend timecards and sign-in sheets not indicating Davis clocked in and signed in her child between July 17 through July 28, 2023, other evidence shows the extent and amount of work performed by Davis at 2 Grandma's House during that timeframe. A hearing officer is entitled to judge witness credibility. *Benjamin v. Anderson*, 2005 MT 123, ¶ 37, 327 Mont. 173, 112 P.3d 1039. "A hearing examiner, when one is used, is in the unique position of hearing and observing all testimony entered in the case." *Fugate v. Shotgun Willies, Inc.*, 270 Mont. 47, 51, 889 P.2d 1185, 1187 (1995) (citation and quotation omitted). Davis asserts that she worked during the timeframe in question and Sammons asserts altogether that Davis did not work. The Hearing Officer finds Sammons' explanation lacking credibility that Davis's presence at the daycare was due to Davis visiting.

Further, the one text Davis received at 12:25 a.m. was received at that time because it was an autogenerated text from a public entity. The text does not show Davis was trying to prove she was working when she was not. Rather, the preponderance of the evidence shows that on July 17, 2023, Davis talked about being back at work and Davis knew how Juza's daughter was doing in the morning and afternoon. On July 18, 2023, Davis texted Sammons about an individual at the daycare needing carrots for lunch. On July 18, 2023, Davis also texted Parks about needing to stay "here" and needing her child to be picked up, which Davis's mother-in-law indicated that she did. Davis met Juza on July 18, 2023, and Juza again texted Davis about how his daughter was doing in the afternoon, to which Davis responded. On July 18, 2023, Davis asked Sammons if Sammons could come over real quick. On July 19, 2023, Davis heard from Juza about his plan for getting his kids in the afternoon. On July 20, 2023, Davis sent Sammons another text asking for Sammons to come over. On July 21, 2023, Davis sent Sammons payroll information. On July 24, 2023, Davis references a staff meeting and asks for Sammons not to yell at her. On July 25, 2023, Davis has more communication with Juza about his daughters and how Davis will follow-up with the teachers tomorrow about what transpired. On July 26, 2023, Davis followed-up with Juza and also indicated to him that because one of his children was sick, they both needed to go home.

On the days as described, if Davis was not working and was just visiting, Davis would not have known about how Juza's daughters were doing on multiple days; Davis would not have needed her child picked up by her mother-

in-law; Davis would not have needed to contact Sammons about carrots and payroll, or to ask her to come over to the daycare to talk, or to remind Sammons about the interview. The Hearing Officer does not find credible that Davis communicated with Juza in an attempt to develop support for a wage claim, nor does the Hearing Officer find credible Sammons' assertion that Davis's text messages were fabricated to support a wage claim or were created to make it look like Davis was working when she was not. The text messages have specific days, times, and messages on them between Davis and others. The Hearing Officer finds it reasonable that the texts exist because Davis was working on the days she claims, doing the work referenced in the text messages themselves. Moreover, the Hearing Officer also does not find credible Sammons' argument that because a few of Davis's communications came after Davis testified she was off work, it means that she must therefore not have been working. The evidence on July 17-26, 2023, shows as a matter of just and reasonable inference that Davis was working full time each day on July 17-21, and July 24-26, 2023, according to her regular salaried work schedule. Davis met her burden in this regard. Davis did not meet her burden in proving that she worked full time on July 27-28, 2023.

Since Davis met her burden of proof, the burden then shifts to 2 Grandma's House to provide "evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee." *Garsjo*, 172 Mont. at 189, 562 P.2d at 477. 2 Grandma's House contends that no evidence is available to be produced since Davis did not work at 2 Grandma's House from July 17 through July 28, 2023, as evidenced by the uAttend records. 2 Grandma's reliance on the uAttend records and the sign-in sheets, as already explained, does not negate the reasonableness of the inference drawn from the evidence showing Davis was at the daycare working. Instead, in spite of the lack of uAttend records and sign-in sheets, Sammons knew Davis was at the daycare working when she received various text messages from Davis about work. The Hearing Officer does not find credible that Davis was just visiting.

Additionally, the evidence shows that Davis did not punch in or sign in. But such failure does not mean Davis did not perform work at 2 Grandma's House for which she must be compensated. The Hearing Officer finds that Sammons knew Davis was at 2 Grandma's House performing work, based on the text message evidence and testimony presented. Regardless of the fact that Sammons and Davis had an agreement where Sammons indicated to Davis that she could not pay her for two additional weeks of maternity leave, after July 17, 2023, that fact does not change the finding that Davis ended up working for that time period. It also is possible that Davis was not supposed to return to 2 Grandma's House on July 17, 2023. Regardless, again, Sammons knew Davis was working based on the text messages she was receiving. Sammons cannot fail to compensate Davis for that work, nor has Sammons provided evidence to negate the reasonable inference that Davis was working. See Admin. R. Mont. 24.16.2524 (2023); *Forrester*, 646 F.2d at 414. Without evidence to negate Davis's substantiated evidence, 2 Grandma's House failed to

meet its burden of proof, and as such, Davis has a right to wages from 2 Grandma's House. Davis has shown 2 Grandma's House owes her unpaid wages of \$1,218.48 as a result of 2 Grandma's House's failure to pay Davis for the work she performed. The amount is determined by utilizing eight days of work (July 17-21, 24-26), based on a daily rate of \$152.31 per day (\$1,650.00 semi-monthly salary x 24 pay periods = \$39,600.00 annual salary / 52 weeks = \$761.54 per week / 5 days = \$152.31 per day).

#### **D. Penalty**

Administrative Rule of Montana 24.16.7566 provides direction regarding the calculation of penalties when wages are determined to be due an employee. Specifically:

(1) For determinations involving claims filed on or after October 1, 1993, if none of the special circumstances of ARM 24.16.7556 apply, penalties are calculated as follows:

(a) a penalty equal to 55% of the wages determined to be due to the employee will be imposed in all determinations issued by the department; but

(b) the department will reduce the penalty to 15% of the wages determined to be due if the employer pays the wages found due in the time period specified in the determination as well as a penalty equal to 15% of that amount.

(2) If a claim involves any of the special circumstances of ARM 24.16.7556, the department will impose the maximum penalty allowed by law.

(3) The penalty calculated according to this rule may be reduced only upon the mutual agreement of the parties and the department.

Under Admin. R. Mont. 24.16.7566(1)(a), 2 Grandma's House owes a penalty of 15 percent of the total wages determined by this decision, to be owed to Davis, which totals \$182.77. That follows 2 Grandma's House paid the wages due in the time specified to reduce the penalty to 15 percent.

#### **V. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation Co.*, 176 Mont. 31, 575 P.2d 923 (1978).

2. 2 Grandma's House owes Davis \$1,218.48 in unpaid wages for work performed from July 17-21, and July 24-26, 2023. Mont. Code Ann. § 39-3-204.

3. 2 Grandma's House owes a penalty of 15 percent or \$182.77. Admin. R. Mont. 24.16.7566.

## **VI. ORDER**

IT IS HEREBY ORDERED that because 2 Grandma's House already paid \$796.19 in wages and \$182.77 in penalty to the Wage and Hour Unit, those amounts shall be released to Shawn Davis, no later than 30 days after service of this decision.

DATED this 13th day of March, 2025.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JOSLYN HUNT  
JOSLYN HUNT  
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry  
Wage & Hour Unit  
P.O. Box 201503  
Helena, MT 59620-1503

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.