

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2148-2016
OF ELIZABETH M. MAYS,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
SAM'S, INC., a Montana corporation)	
d/b/a SAGEBRUSH SAM'S.)	
)	
Respondent.)	
)	

* * * * *

I. INTRODUCTION

On June 7, 2016, Elizabeth Mays (Mays) filed a wage claim against Sam's, Inc., a Montana corporation d/b/a Sagebrush Sam's (Sam's), with the Department of Labor and Industry. The Department issued a decision which was appealed to the Office of Administrative Hearings (OAH). OAH issued a decision which Mays appealed on a petition for judicial review to the district court. The district court affirmed OAH in part and reversed in part as to tips and penalties owed. Mays appealed the district court decision to the Montana Supreme Court which affirmed the district court's decision in its entirety on September 17, 2019 in case 2019 MT 219, and "remanded to the Agency for recalculation of Mays award" as required by the district court's order. When the remittitur was issued, the remand was not indicated and the matter was not sent to the agency. Due to this fact, the record was not transmitted from the district court to OAH until March 7, 2025.

OAH issued a Notice of Hearing and Scheduling Conference on March 17, 2025, that scheduled a conference on April 10, 2025, at 2:00 p.m., Mountain Time. Both parties were given notice of this conference and both failed to appear. The Notice of Hearing and Scheduling Conference indicated "A party's failure to appear for any conference, and/or failure to obey orders issued by the Hearing Officer, may result in sanctions against that party that can include entry of default, dismissal of an appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions." Because the Supreme Court opinion limited the authority of the hearing officer to specific issues as indicated in the district court's order, issues which are clear and undisputed in the record, the hearing officer determined that no hearing is necessary and no briefing is necessary. The record on remand consists of Documents 1-419, which incorporates the prior proceedings. On April 15, 2025, the Hearing Officer issued a Notice of Requirement to Show Case, giving the parties until

April 21, 2025 to show cause why the following findings of fact and conclusions of law should not constitute the final order. Neither party filed a showing of cause.

II. ISSUE

What damages are owed to Mays as a result of her wage claim?

III. FINDINGS OF FACT

1. Mays worked 8.5 hours between approximately March 8 and March 14, 2016.
2. The minimum wage rate of pay for that time period was \$8.05 per hour.
3. Mays is due \$68.43 for those hours.
4. The prior OAH decision subtracted \$60.00 in payment from customers as dance fees from those wages. The district court determined the \$60.00 should not have been subtracted because it constituted tips. Mays is due \$60.00.
5. The prior OAH order added \$25.00 to the wages due for improper fees paid to Sam's. The district court affirmed the \$25.00 owed to Mays and Mays is due \$25.00.
6. Mays is due \$153.43 in wages.
7. The prior OAH order did not add penalties. The district court held the penalty statute Mont. Code Ann. § 39-3-206 applied and indicated the 110% penalty was appropriate. The penalty of 110% amounts to \$168.77 in penalties.
8. Sam's previously submitted \$175.81 payment to the department which is being held pursuant to Mont. Code Ann. § 39-3-213.

IV. DISCUSSION

Because the Supreme Court order and district court order directed an award amount that is clear in the record, Mays is due \$153.43 in wages. Further, as indicated by the district court, the 110% penalty amount is appropriate for a penalty of \$168.77. The total due Mays is \$322.20. Because no party has appeared, it is appropriate to enter a final order in this matter.

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* (1978), 176 Mont. 31, 575 P.2d 925.

2. Sam's owes Mays \$322.20, consisting of \$68.43 in wages for hours worked, \$60.00 in tips improperly subtracted from the prior award, \$25.00 in fees improperly paid to Sam's as indicated in the prior orders, and \$168.77 in penalties pursuant to Mont. Code Ann. § 39-3-206.

3. Sam's paid \$175.81 to the department. Sam's must submit an additional \$146.39.

VI. ORDER

Sam's is hereby ORDERED to tender a cashier's check or money order in the amount of \$146.39, representing wages and penalty, made payable to Elizabeth Mays, and mailed to the **Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503**, no later than 30 days after service of this decision. This payment and the prior payment made to the department may be released to Mays upon expiration of the appeal timeframe.

DATED this 23rd day of April, 2025.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JUDY BOVINGTON
JUDY BOVINGTON
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.