

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1868-2022
OF RICHARD D. HINMAN,)	
)	
Hinman,)	
)	ORDER GRANTING
)	SUMMARY JUDGMENT and
)	FINAL AGENCY DECISION
vs.)	
)	
MONTANA INDEPENDENT LIVING)	
PROJECT, INC.)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Claimant Richard Hinman (Hinman) filed a wage claim with the Employment Relations Division, Compliance and Investigations Bureau on April 8, 2022, alleging that the Respondent Montana Independent Living Project, Inc. (“mILp”) owed him \$2,070.24 in wages for work performed since January 1, 2022. Hinman also claimed he had worked for four years without pay. The Compliance and Investigations Bureau determined Hinman was not due wages. Hinman appealed to the Office of Administrative Hearings (OAH).

mILp made a Motion for Summary Judgment asserting it is entitled to judgment as a matter of law because there are no genuine issues of material fact that it did not pay Hinman in full for the wages he was owed. Hinman responded. mILp replied. No party requested oral argument. This matter is now ripe for decision.

II. UNDISPUTED FACTS

1. mILp provides a variety of programs to help people with disabilities live independent lives.¹

¹ At some point mILp changed its name to Ability Montana.

2. mILp's Self-Direct Program is designed for people who require additional support in their homes from a person working as a Personal Care Assistant ("PCA"). This may be due to issues such as aging or disabilities.

3. The Self-Direct Program is governed in part by the Administrative Rules of Montana and Department of Public Health and Human Services' (DPHHS) policies. Mont. Admin R. 37.40.1101 to 37.40.1135; *Community First Choice Program Self-Direct Policy Manual*, Montana DPHHS, <https://dphhs.mt.gov/sltc/cfc-sdpolman> (accessed March 8, 2023)

4. Through the Self-Direct Program, people who need in home assistance are designated by DPHHS as "members" and by mILp as "Consumers." Consumers interview their PCAs, hire their PCAs, and direct the services with which their PCAs assist.

5. A Consumer may have the PCA assist with various daily living tasks such as bathing, personal hygiene, transferring, positioning, mobility, eating, dressing, toileting, exercising, and meal preparation. A PCA may also assist with health maintenance activities such as self-administered medication assistance and with instrumental activities of daily living such as household maintenance and shopping.

6. The Self-Direct Program allows Consumers to make choices about how, when, and by whom these personal care tasks are performed.

7. mILp completes an intake Service Plan for each Consumer. The Service Plan explains which personal care tasks the Consumer needs help with and specifies the number of hours a PCA may work for the Consumer to complete those tasks ("allowable hours"). Mont. Admin. R. 37.40.1135 (explaining that a Consumer may receive PCA services as provided in the Consumer's Service Profile).

8. The Consumer is the PCA's employer, directing the PCA's tasks, and mILp becomes the "employer of record," processing payment for PCA services. Mont. Admin. R. 37.40.1127(6) ("Self-directed [Personal Assistance Services] provider agencies must act as the employer of record for direct-care workers for the purposes of payroll . . .").

9. mILp provides each PCA with a copy of its Self-Direct Program Policies and Procedures Manual (Manual), which explains the process by which PCAs are paid for their services. PCAs are responsible for filling out timesheets specifying the hours they work and the tasks they performed during those hours. The PCA (as the employee) and the Consumer (as the employer) must sign the timesheet before it is presented to mILp for payment. mILp can only

pay PCAs up to the Consumer's allowable hours as specified in the Service Plan.

10. mILp completed an intake Service Plan for L.S. on February 3, 2022, which notes the allowable hours as 26.5 hours every two weeks and authorizes services for bathing, personal hygiene, meal preparation, medication administration, housework, shopping, and assistance with correspondence.²

11. L.S. hired her friend, Hinman, as her PCA. Hinman completed his Application for Employment and other necessary paperwork with mILp on February 2, 2022. As part of this paperwork, Hinman signed an Acknowledgment form stating that he had received, read, and agreed to follow mILp's Manual.

12. Hinman's official date of hire as L.S.'s PCA through mILp was February 10, 2022 when the required paperwork was complete. Hinman began filling out his timesheet that day. In total, Hinman submitted three timesheets to mILp for payment:

Pay period February 6-19, 2022, for 20 hours submitted on time and paid on March 1, 2022;

Pay period February 20-March 5, 2022, for 29.5 hours submitted on March 8, with 26.5 hours paid on March 29, 2022;

Pay period March 6-19, 2022, for 30.25 hours submitted on March 23, with 26.5 hours paid on April 12, 2022.

13. For all three timesheets, Hinman indicated he "lived in" the same house as L.S. On the last two timesheets, he also indicated he worked all day from 8:00 a.m. to 8:00 p.m.

14. mILp paid Hinman's second and third timesheets in subsequent pay periods because Hinman submitted those timesheets past the submission deadline. The last timesheet was paid after this claim was filed but before the investigation was complete, because the timesheet was submitted late. mILp attempted to confer with L.S. and Hinman regarding the late timesheet submissions, offering training and assistance in a letter dated March 29, 2022.

15. mILp had discussed its Self-Direct Program with L.S. previously in 2019. At the time, L.S. lived in government-sponsored housing units, and Hinman was not allowed on the property. mILp advised L.S. that Hinman

² Because L.S. is eligible for the mILp Self-Direct Program, she has issues which are entitled to privacy protections. However, the nature of her issues are not necessary to the resolution of this matter. Therefore, in order to protect her information, she is referred to as L.S. in this decision.

could not provide PCA services to her because he was not allowed on the property where she lived. L.S. informed mILp that she had decided to stay with her current services until she was able to find different housing where Hinman could be her PCA.

III. STANDARD OF REVIEW

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). “The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” M. R. Civ. P. 56.

The moving party “must show a complete absence of any genuine issue as to all facts shown to be material in light of the substantive principle that entitles that party to a judgment as a matter of law.” *Bonilla v. University of Montana*, 2005 MT 183, ¶ 11, 328 Mont. 41, 116 P.3d 823. A “material” fact is one capable of affecting the substantive outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Material issues of fact are identified by looking to the substantive law which governs the claim.” *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431. A dispute is “genuine” if there is enough evidence for a reasonable trier of fact to return a verdict for the non-movant. See *Scott v. Harris*, 550 U.S. 372, 380 (2007). The inquiry is, essentially, “. . . whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

“The party opposing summary judgment must come forward with evidence of a substantial nature; mere denial, speculation, or conclusory statements are not sufficient.” *McGinnis v. Hand*, 1999 MT 9, ¶ 18, 293 Mont. 72, 972 P.2d 1126 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262 (1997)). A tribunal reviews the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor and without making findings of fact, weighing the evidence, choosing one disputed fact over another, or assessing the credibility of witnesses. *Fasch v. M.K. Weeden Const., Inc.*, 2011 MT 258, ¶¶ 16-17, 362 Mont. 256, 262 P.3d 1117.

IV. DISCUSSION

mILp asserts it is entitled to summary judgment because it was not Hinman's employer before Hinman was hired through its program and because it has paid Hinman all the wages he was due. Hinman asserts he should be paid for four years worth of wages for providing care to L.S. and being available all day every day during that time. Hinman argues mILp did not let L.S. hire him two years prior to 2022. Hinman asserted he wanted a hearing to hear disputed evidence and allow L.S. to testify.

A. Employer of Record Relationship Between mILp and Hinman

The first issue that must be considered is when mILp became potentially liable to pay PCA wages to Hinman for the care he provided to L.S. mILp asserts it became Hinman's employer of record on February 10, 2022. Hinman asserts he has been providing around the clock care for L.S. since 2019 and that mILp should have been paying him as long as four years ago.

Under the Administrative Rules that govern DPHHS' self-directed care program, Hinman cannot receive payment for PCA care for L.S. until a service plan for L.S. is approved. Mont. Admin. R. 37.40.1114. Further, mILp cannot be required to pay wages to Hinman unless and until it was his "employer of record." See Mont. Admin. R. 37.40.1127. Only services included in the service profile can only be reimbursed. Mont. Admin. R. 37.40.1135. mILp as a service provider agency must approve the timesheets submitted to ensure compliance with program requirements. *Community First Choice Program Self-Direct Policy Manual*, Montana DPHHS, Policy 718. Finally, mILp's Manual indicates PCAs will only be reimbursed for allowable hours. Manual pg. 17.

The record is undisputed in this matter that Hinman was hired on February 10, 2022. Although Hinman asserts mILp allegedly did something that prevented him from being hired earlier, his allegations are completely unsupported. Summary judgment requires that he "must come forward with evidence of a substantial nature; . . . conclusory statements are not sufficient." *McGinnis*, 293 Mont. 72, ¶ 18. While Hinman may have been providing care for L.S. before February 10, 2022, the undisputed facts make clear that he was not approved as a PCA until that date, in conformity with the rules of the program. There exists no evidence that mILp had any obligation to pay Hinman any wages before February 10, 2022. Although Hinman argues for a hearing, requesting a hearing is an insufficient response to a motion for summary judgment. Rather, he was obligated to come forth with evidence that was more than mere speculation. mILp indicated it conferred with L.S. in 2019 about potential PCA services from Hinman. Hinman failed to show by

more than a conclusory allegation that the information given to L.S. was incorrect.

As a result, mILp cannot be liable for any wages to Hinman before February 10, 2022. mILp's responsibility as the employer of record to pay Hinman as a PCA only began after it established a relationship with him, regardless of his relationship with L.S. As a matter of law, mILp is entitled to summary judgment because there is no genuine issue of material fact that mILp was liable for any wages before February 10, 2022.

B. Payment of Wages by mILp to Hinman after February 10, 2022

The next issue that must be considered is whether Hinman is owed any unpaid wages starting on February 10, 2022. mILp asserts Hinman is only entitled to allowable hours, and that he was paid in full for all allowed time submitted. Hinman asserts he has been providing around the clock care and indicated on his timesheets he "lived in" with L.S. and was available from 8:00 a.m. to 8:00 p.m. He put more hours on two of his timesheets than the allowable hours in L.S.'s service plan. He had not yet been paid for his final timesheet when he filed his claim, but was paid for the allowable hours on that timesheet after his claim was filed.

In order to prove he is due wages, Hinman must substantiate his claim by showing "that he did in fact perform . . . work for which he was not properly compensated and produce[s] sufficient evidence to show the extent and amount of such work as a matter of just and reasonable inference." *Garsjo v. Department of Labor & Indus.*, 172 Mont. 182, 188–89, 562 P.2d 473, 476–477 (1977); see also *Arlington v. Miller's Trucking, Inc.*, 2015 MT 68, 378 Mont. 324, 343 P.3d 1222.

Again on this point, Hinman has failed to produce any evidence that he was entitled to additional pay. Hinman failed to come forward with any evidence other than the three timesheets he submitted for which he was already paid. His arguments that he was entitled to more pay are conclusory. Although his timesheets reflect both all day availability and hours worked, he does not support his argument he is due more wages with more than mere speculation. Hinman acknowledged he was required to follow the rules of mILp's program. The program only reimburses the designated "allowable hours." Therefore, Hinman is not entitled to payment for his all day availability or for the hours he submitted in excess of L.S.'s allowable hours. Compare *Kirchner v. Dep't of Pub. Health & Human Servs., Div. of Quality Assurance*, 2005 MT 202, ¶ 30, 328 Mont. 203, 211, 119 P.3d 82, 87 (DPHHS is entitled to reimbursement for overpayments.) While Hinman or L.S. might want him to be paid for around the clock care, that is not what L.S.'s service

plan provides for. Therefore, the undisputed facts demonstrate that mILp has paid Hinman for all of the wages owed to him.

Further, mILp's policy providing that a timesheet submitted late will be paid in the next pay period is consistent with Montana law. See § 39-3-204(1), (3), MCA. When asked in discovery to identify any pay periods that he submitted a timesheet to mILp for which he did not receive compensation, Hinman only provided the three timesheets for which he has already been paid. Therefore, the undisputed facts demonstrate that mILp has paid Hinman all wages due to him and that mILp is entitled to judgment as a matter of law.

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. There is no genuine issue as to any material fact with regard to whether Hinman was entitled to any additional compensation from mILp and mILp is entitled to judgment as a matter of law.

3. Due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute. See *In the Matter of Peila*, 249 Mont. 272, 280-281, 815 P.2d, 144 (1991).

VI. ORDER

IT IS THEREFORE ORDERED THAT mILp's Motion for Summary Judgment is GRANTED and Hinman's claim is DISMISSED with prejudice.

DATED this 13th day of March, 2023.

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