

Monday through Friday, 2:00 p.m. through 10:00 p.m., and every other weekend. Id. If she was unable to work, she stated she contacted “Melissa” “so other arrangements can be made.” Id. Garrison wrote that she is required to report to FHCH’s office as needed for required staff meetings and trainings. Id. Garrison noted that she is required to provide the services personally and a cellphone application is used to monitor arrival and departure times from clients’ homes. Id. Garrison further wrote in her questionnaire that FHCH has the right to direct and control the manner in which her services are performed and a “supervisor assigns clients, monitors performance, and may reassign [her] to another client if [FHCH] is not satisfied with performance.” Id.

Garrison additionally wrote that she is required to complete visit notes for a client after every shift. Id. p. 40. Garrison indicated that she was not able to hire assistants. Id. Garrison wrote that she was paid an hourly wage by FHCH. Id. p. 41. Garrison noted that she is subject to removal from a client’s home or termination if her services are not satisfactory. Id. Her employment was ultimately terminated by FHCH. Id.

On December 18, 2023, FHCH provided IWD a copy of Garrison’s “independent contractor agreement.” Id. p. 12-17. The term of agreement was for one year; September 6, 2022 through September 6, 2023. Id. p. 12. Eleven “duties” were listed in the agreement that were required of the caregivers including, “will follow nursing instructions...,” “will communicate concerns to team members, FHCH and to family members...,” “will complete all necessary documentation during each shift,” “will work each assigned shift unless other arrangements approved by FHCH...,” and “will read and agree to the announcements set out in the APP used by FHCH.” Id. ps. 12-13. The agreement further notes “FHCH shall provide to Caregiver the necessary and required training for the duties” required for their work. Id. p. 13.

The agreement further stated that FHCH will “provide a monthly work schedule ... working to keep Caregiver’s schedule as full as desired by the Caregiver.” Id. It notes, “FHCH will work with Caregiver to schedule around time off requested by Caregiver.” The agreement outlines a process whereby the fifteenth day of the month, the caregiver provides their availability for the following month and by the twenty-fifth day, FHCH will produce the work schedule for the next month. Id. If a worker cannot complete their assigned shifts, the worker must find a replacement from an approved list of FHCH caregivers. Id. The agreement warns that “three call ins with a no show per quarter by a Caregiver may result in termination.” Id. The agreement also requires the caregiver to cover two shifts every other weekend and failure to provide such coverage in two or more successive months, may also lead to termination. Id. There is no guarantee of hours to caregivers. Id. The agreement further warns that a \$20 fee may be assessed if FHCH has to find a replacement for a worker’s shift. Id.

The agreement additionally provides that FHCH shall provide equipment, as needed, if on hand; paper materials; and provide “initial contact with new Recipients, and will provide ongoing on-call support to Caregivers... as needed, and handle any issues that arise with Recipients.” Id. The agreement provides that all records, including those created by the caregivers, are the property of FHCH. Id. p. 14. The agreement has a standard pay scale for workers that only changes based on the number of care recipients or the type of care

provided. Id. The agreement does not allow people to be paid more based on their experience or training; other than an RN providing skilled nursing care. Id.

The agreement states that caregivers shall be paid weekly on Mondays, unless that day is a holiday, then wages are paid the next business day. Id. The agreement warns that caregivers are responsible for paying their own taxes and that the caregiver performs work as an independent contractor. Id. ps. 14-15. The agreement has a one year non-compete clause for both solicitation of clients and of FHCH employees. Id. ps. 15-16. The agreement provides that either side, for whatever reason, can terminate the agreement with written notice on the other party. Id. p. 16. The agreement states that FHCH shall pay all amounts due to the caregiver upon separation if “caregiver is in good standing and has returned all FHCH shirts and records to FHCH” or offset of pay may occur. Id.

FHCH also returned a questionnaire to IWD regarding Garrison’s employment. Id. ps. 18-22. FHCH stated Garrison worked as a CNA for FHCH from August 22, 2022 through February 24, 2023 and her work was “permanent” assuming there was a client. Id. p. 19. FHCH notes that Garrison worked for FHCH with “full understanding” she was an independent contractor. Id. FHCH claims Garrison’s hours varied, which is contradictory to Garrison’s questionnaire. Id. The questionnaire notes that the only meeting Garrison was required to attend was to sign the agreement. Id.

The questionnaire further notes that there is supervision of caregivers to a degree as they are to follow a care plan and produce daily notes. Id. ps. 19-20. If a caregiver’s care is unsatisfactory, FHCH notes they are subject to termination or “job coaching.” Id. p. 20. FHCH handles problems and complaints. Id. FHCH’s questionnaire indicates that caregivers are not allowed to employ assistants. Id. The questionnaire also states that FHCH provides equipment, supplies, and materials to caregivers. Id. Any other out of pocket care expense, including mileage, is reimbursed by FHCH to the caregiver with costs then invoiced to the care recipient. Id. Caregivers do not personally pay for “any” expense while performing services for FHCH other than maintaining their own vehicle. Id.

FHCH appealed the determination that Garrison should be considered an employee. FHCH argues it is filling a much-needed void of home healthcare and hospice services. Id. p. 48. FHCH notes that if caregivers are not considered independent contractors, FHCH would likely be unable to continue operating. Id. At hearing, Buchanan argued all of her workers understand they are independent contractors when they apply for their job and are hired. Buchanan states that while she provides some supplies to the caregivers, those supplies are typically donated. If she would need supplies that she does not have on hand, FHCH would buy them and invoice the client for the cost.

Buchanan did explain there must be a certain level of control by FHCH because of the sensitive nature of healthcare. She wants to ensure the care FHCH provides for their vulnerable clients is quality. Buchanan noted that while the agreement requires attendance at certain meetings and working weekends; typically, no meetings are required and any forced weekend work is on an as-needed basis. However, she did note that there was a hospice training that she requires caregivers to attend should they want to provide end of life care.

CONCLUSIONS OF LAW

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96.¹ IWD's Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.² IWD has adopted rules found at 871 IAC chapter 23.

IWD initially determines all issues related to liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship.³ Services performed by an individual for remuneration are presumed to be employment, unless proven otherwise.⁴ An individual or business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96.⁵ If an employer-employee relationship exists, the designation or description of the relationship by the parties as anything other than an employer-employee relationship is immaterial.⁶

An employer is defined as "any employing unit which in any calendar quarter in either the current or preceding calendar year paid wages for service in employment."⁷ An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa.⁸ The term "employment" is defined as service "performed for wages or under any contract of hire, written or oral, express or implied."⁹ Employment includes service performed by "[a]ny individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."¹⁰

Whether a person is an independent contractor or an employee is a "factual determination based on the nature of the working relationship and many other circumstances, not necessarily on any label used to identify the parties in the contract."¹¹ In other words, if the relationship of employer and employee exists, the parties' designation or description of the worker as an independent contractor is immaterial and of no consequence.

The right of control, as developed through the common law, is the principal test for determining whether a worker is an employee or independent contractor in the unemployment context.¹² Whether an employer-employee relationship exists under the usual common law rules is determined based upon an analysis of the individual facts in

¹ Iowa Code § 96.9(1).

² *Id.* § 96.11(1).

³ *Id.* § 96.7(4).

⁴ 871 IAC 23.19(6).

⁵ Iowa Code § 96.19(18)f, *Id.* 22.7(3).

⁶ 871 IAC 22.19(7).

⁷ Iowa Code § 96.19(16)a.

⁸ *Id.* § 96.19(17).

⁹ *Id.* § 96.19(18)a.

¹⁰ *Id.* § 96.19(18)a(2).

¹¹ Pennsylvania Life Ins. Co. v. Simoni, 641 N.W.2d 807, 813 (Iowa 2002) (quoting Harvey v. Care Initiatives, Inc., 634 N.W.2d 681, 684 n. 2 (Iowa 2001)).

¹² Gaffney v. Dep't of Employ. Servs., 540 N.W.2d 430, 434 (Iowa 1995).

each case.¹³ IWD has also adopted a number of rules with factors to consider in determining whether a worker is an independent contractor or employee.¹⁴

Under IWD's rules,

The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.¹⁵

The right to discharge or terminate a relationship is "an important factor indicating that the person possessing that right is an employer."¹⁶ If the discharging party may be liable for damages for breach of contract, the circumstances are indicative of an independent contractor relationship.¹⁷

The furnishing of tools, equipment, materials, and place to work to the individual who performs the service are characteristic of an employer.¹⁸ "In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor."¹⁹

Another factor includes the nature of the worker's contract for the performance of a certain type, kind or piece of work at a fixed price.²⁰ Generally an employee performs the work continuously and his or her labor is primarily purchased, whereas an independent contractor undertakes the performance of a specific job.²¹ An employee is typically paid a fixed wage on a weekly or hourly basis, whereas an independent contractor is typically paid one sum for the entire work, whether it is paid in a lump sum or installments.²²

Independent contractors can make a profit or loss and are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed.²³ Independent contractors often have significant investment in real or personal property that they use in performing services for

¹³ 871 IAC 23.19(6).

¹⁴ *Id.* 23.19.

¹⁵ *Id.* 23.19(1).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* 23.19(2).

²¹ *Id.*

²² *Id.* 23.19(4).

²³ *Id.* 23.19(3).

others.²⁴ Independent contractors have the right to employ assistants with the exclusive right to supervise their activity and completely delegate work.²⁵

An independent contractor follows a distinct trade, occupation, business or profession in which the worker offers his or her services to the public to be performed without the control of those seeking the benefit of the worker's training or experience.²⁶ Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business, or profession, in which they offer services to the public, are independent contractors and not employees.²⁷ Professional employees who perform services for another individual or business are covered employees.²⁸

ANALYSIS

As noted, services performed by an individual for remuneration are presumed to be employment, unless proven otherwise and the business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96. As in most of these cases, there are factors that support both an employer, employee relationship and an independent contractor relationship.

Nonetheless, the factors supporting an employer, employee relationship are more persuasive here. There is a level control by FHCH over caregivers that is not consistent with an independent contractor relationship. Caregivers must clock in when starting a shift and clock out when ending one. FHCH calculates the hours that caregivers work. Caregivers do not invoice FHCH. Caregivers are paid an hourly rate for their services. Unless performing certain defined tasks, all caregivers are paid the same hourly rate. An experienced caregiver cannot contract for higher wages than a brand-new caregiver. The agreement provides that caregivers are paid weekly; not when certain defined contracted tasks are performed. Garrison's work was deemed "permanent" by FHCH, assuming there was a client.

Caregivers perform work under FHCH's name. Caregivers have the ability to wear FHCH branded clothing while doing their work, giving the impression the caregiver is an agent of FHCH. This FHCH branded clothing must be returned should a caregiver no longer be employed by FHCH or risk having their final pay offset. The agreement requires caregivers attend meetings, if any are had. Either FHCH or the caregiver can terminate the working relationship at any time without risking contractual violations. Caregivers are required to complete reports during every shift and follow the FHCH created care plan for clients. Caregivers are subject to "job coaching" for deficient work. Caregivers providing hospice care are required to attend a special hospice class. Typically, independent contractors will have preexisting training and skills for the job prior to being contracted to work. Usually, if work is deficient, the firm would just no longer contract with that person.

²⁴ *Id.*

²⁵ *Id.* 23.19(5).

²⁶ *Id.* 23.19(2).

²⁷ *Id.* 23.19(1).

²⁸ *Id.*

Caregivers for FHCH cannot suffer a financial loss while performing work for FHCH. Caregivers cannot employ assistants, even at their own expense. If a caregiver is unable to cover one of their shifts, they are required to find a replacement but must choose a replacement from a FHCH approved list of other caregivers. FHCH may impose a fine if FHCH has to find a replacement when a caregiver cannot work a shift and cannot find an approved replacement on their own. While perhaps not always enforced, the employment agreement contains a clause that mandates caregivers work two shifts every other weekend, if needed. An independent contractor is typically not going to be forced to work any shifts. The agreement also mentions caregiver's "requested time off." Generally, there would be no need for an independent contractor to need "time off."

Any care expenses, other than mileage for travelling to a client's home, is seemingly reimbursed. Materials, and even some equipment, is provided by FHCH to caregivers when such items are on hand. The employment agreement contains a one year non-compete clause following the expiration of the agreement or termination of the working relationship. FHCH is on call for caregivers to contact should an issue arise. There is no evidence that the caregivers offer their services to the public at large or maintain any kind of personal business insurance. The factors supporting an employer, employee relationship here are numerous. This record is just inconsistent with an independent contractor relationship.

It is understood that due to the sensitive nature of healthcare, FHCH believes they need to exercise a higher level of control to ensure vulnerable individuals are provided competent care. Wanting this level of control in this type of industry is more than reasonable. However, this higher level of control moves the scale to an employer, employee working relationship. All the factors listed above are just too numerous and persuasive to find that FHCH met their burden to show an independent contractor relationship. Most persuasively is caregivers' labor is bought through a standard hourly wage, caregiver pay is made on a scheduled weekly basis, caregivers must clock in and clock out on a phone app., caregivers may be forced to work weekends or face termination, either side can terminate the working relationship without contractual damages, the working relationship appears to be continuous and permanent, caregivers cannot employ assistants even at their own cost, at least some meetings or trainings are mandatory, and final wages may be offset if certain FHCH clothing items are not returned.

As is typical in these cases, there are some factors supporting an independent contractor relationship but they are outweighed by the factors supporting employment. While both FHCH and the caregivers may have understood the working relationship to be that of independent contractors; their subjective belief does not defeat the voluminous record indicating an employer, employee relationship.

Home healthcare and hospice services are greatly needed in Iowa and across the country. It is a vital and noble industry. Nonetheless, this judge must analyze the evidence independently of how needed or important a certain business' services may be. When reviewing the record, FHCH has failed to show an independent contractor relationship with Garrison and other similarly situated caregivers.

DECISION

Iowa Workforce Development's decision is **AFFIRMED**. IWD correctly determined that an employer-employee relationship existed.

APPEAL RIGHTS

This decision constitutes final agency action. Any party may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing. Any party may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.²⁹

CC:

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²⁹ 871 IAC 26.17(5)

Case Title: FRIENDS HOME CARE AND HOSPICE LLC V. IOWA
WORKFORCE DEVELOPMENT
Case Number: 24IWDM0015
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'TA', with a long horizontal stroke extending to the right.

Thomas Augustine, Administrative Law Judge