

**In the Matter of**

**KATHY MORSE dba Central Oregon Intermediate Care**

**Case No. 70-02**

**Final Order of Commissioner Dan Gardner**

**Issued October 23, 2003**

**SYNOPSIS**

Claimant filed a wage claim against Respondent seeking \$371.57 in unpaid wages. Respondent, who had ceased doing business, alleged it had insufficient assets to pay those wages. A determination was made that Claimant's claim was valid and Claimant was paid \$371.57 from the Wage Security Fund. The Commissioner ordered Respondent to repay this amount, along with a 25 percent penalty. ORS 652.140, ORS 652.414, ORS 839-001-0500 through 839-001-0520.

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The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Dan Gardner, Commissioner of the Bureau of Labor and Industries ("BOLI") for the State of Oregon. The hearing was held on September 16, 2003, at BOLI's office located at 3865 Wolverine NE, E-1, Salem, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by case presenter Cynthia L. Domas, an employee of the Agency. Respondent Kathy Morse did not appear and was held in default.

The Agency called two witnesses: Margaret Pargeter, Wage and Hour Division compliance specialist, and Stephanie Bennett (telephonic), the wage claimant.

The forum received into evidence:

- a) Administrative exhibits X-1 through X-21 (submitted or generated prior to hearing);
- b) Agency exhibits A-1 through A-21(submitted prior to hearing).





1 Oregon Intermediate Care and engaged the personal services of one or more  
2 employees in Oregon.

3 2) Claimant began work at Respondent's business on October 1, 2001. Her  
4 last day of work was December 10, 2001.

5 3) Respondent agreed to pay Claimant \$7.00 per hour to start. Beginning  
6 November 1, 2001, Respondent raised Claimant's pay to \$7.25 per hour.

7 4) Claimant's duties included caring for Respondent's clients, babysitting  
8 Respondent's children, housecleaning, and cooking.

9 5) Claimant had no financial interest in Respondent's business. She was  
10 hired for an indefinite period of time. Respondent determined her hours of work and  
11 she did not use any of her own tools or equipment while working for Respondent. She  
12 received no special training to perform her work.

13 6) At the time Claimant left Respondent's employment, Respondent owed  
14 her \$371.57 in unpaid wages that were earned between November 29 and December  
15 10, 2001. At the time of hearing, Respondent still had not paid any of those wages.

16 7) Claimant's wage claim was assigned to Margaret Pargeter, Agency  
17 compliance specialist, for investigation.

18 8) Pargeter investigated Claimant's wage claim by interviewing Claimant and  
19 other witnesses and obtaining a written response from Respondent. At the conclusion  
20 of her investigation, she determined that Claimant was Respondent's employee and had  
21 a valid wage claim. She also determined that Respondent had gone out of business  
22 and that Respondent was not going to pay the unpaid wages based on her defense that  
23 Claimant was an independent contractor.

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1 **ORDER**

2 NOW, THEREFORE, as authorized by ORS 652.414, and as payment of the  
3 amounts paid from the Wage Security Fund as a result of her violation of ORS 652.140,  
4 the Commissioner of the Bureau of Labor and Industries hereby orders Respondent  
5 **Kathy Morse** to deliver to the Fiscal Services Office of the Bureau of Labor and  
6 Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

7 A certified check payable to the Bureau of Labor and Industries in the  
8 amount of FOUR HUNDRED SIXTY FOUR DOLLARS AND FORTY SIX  
9 CENTS (\$464.46), representing \$371.57 paid to Stephanie Bennett from  
10 the Wage Security Fund and a 25 percent penalty of \$92.89 on that sum,  
11 plus interest at the legal rate on the sum of \$464.46 from February 1,  
12 2002, until paid.  
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