

**SS-8 Determination—Determination for Public Inspection**

Occupation 05CSI.21 Companion Sitter	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

**For IRS Use Only:**

**Facts of Case**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the payer concerning this work relationship. The payer responded to our request for information regarding this relationship.

From the information provided the worker was engaged by the payer to perform services as an elder caregiver for the payer's aunt. The worker's presence was to enable the payer's aunt to continue to live in her home for as long as possible by assisting the payer's aunt with her health, safety, and well-being. The worker followed the instructions and assignments she received from the payer and as listed on the job description she also received from the payer. The payer and the payer's aunt determined how she performed her services. The worker was required to personally perform her services at the home of the payer's aunt. The worker was not required to submit reports and meetings usually consisted of variations in instructions via the telephone and face to face at the residence of the payer's aunt. The worker's routine was to work every night from 5 p.m. to 9 a.m. the next morning and her duties included meal preparation, household cleaning, assisting the payer's aunt with wheelchair transfers, and securing the home for the evening. The payer was responsible for the hiring and paying of substitutes or helpers.

The worker was provided with the food, clothing, wheelchair and other furnishings and supplies in order to perform her services. The worker did not incur any expenses and she was paid a set amount per month by this payer. The payer established the payment for services provided. The worker did not have an investment in a business related to services provided and she therefore, did not have an opportunity to incur a loss as a result of her services.

The worker was permitted to reside at the home of the payer's aunt. The worker did not perform similar services for others and she did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, while the worker did not require training, this in and of itself does not determine the worker's status. Some workers may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The payer retained the right to direct and control the worker and her services to insure the health and safety of their loved one.

The payer's statement that they did not pay the worker a salary but did pay her a set amount per month for staying with her aunt at night. The worker was engaged to perform services as evidenced by the job description given to the worker and she was paid for those services. So a work relationship existed. We then need to look at whether the worker displayed characteristics of an independent contractor; such as the outpouring of money into a business offering those services to the public and the opportunity to incur a loss or realize a profit as a result of her services. The worker was not engaged in an independent enterprise but performed elder care services in the personal home of the person being cared for. A worker or individual who opens up an elder care facility or provides elder care services exclusively out of their own home providing services to the general public is operating his or her own business. This type of business requires capital for equipment, supplies, licensing, insurance, rent, and other items. However, this was not what took place in this case. There was no evidence presented or found in this investigation that the worker was in the business of providing elder care services to the public out of her own home or a facility set up for this purpose. The worker did not have a business license or business registration in the state which she performed services.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

A worker is a household employee if they are hired to do household work in personal residence. The worker is an employee if the payer can control not only what work is done, but how it is done. It does not matter whether the work is performed on a full time or part time basis or hired through an agency or from a list provided by an agency or association. It also does not matter whether the worker is paid on an hourly, daily, or weekly basis, or by the job.

Household work is work done in or around a personal home by the following people.

- Babysitters
- Caretakers
- Cleaning people
- Domestic workers
- Drivers
- Health aides
- Housekeepers
- Maids
- Nannies
- Private nurses
- Yard workers

Based on the above analysis, we conclude that the payer had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.