

## SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Personal Service Providers

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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

The facts provided for this case show the payer (an individual) engaged the worker to perform services in the home as a home health provider. The payer considered the services to have been performed in the capacity of an independent contractor, and not as an employee.

The worker followed the payer's care plan in the performance of her services. Work methods were determined by the payer (and family members), and the worker. Problems were reported to the payer (and family members) for resolution purposes. The worker performed her services personally, following a set shift schedule established by the payer (and family members).

All items needed to perform the services were provided for the worker's use. The worker incurred expenses for travel to and from the payer's residence. The worker was paid on an hourly rate basis for her services. There was no information provided to support that the worker incurred economic loss or financial risks related to the services she performed for the payer.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did she advertise as being available to perform similar services for others while engaged by the payer. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

---

**Analysis**

---

In general, domestic services include services of a household nature in or about a private home performed by cooks, waiters, butlers, housekeepers, maids, valets, babysitters, janitors, laundresses, caretakers, handymen, gardeners, grooms, chauffeurs of family-use vehicles, and companions for convalescents, the elderly, or the disabled. A private home is a fixed place of abode of an individual or family.

Nurses' aides and other unlicensed individuals normally perform services that are expected of maids and servants. Such services include bathing the individual, combing his/her hair, reading to the individual, arranging bedding and clothing, and preparing meals. These services are also considered domestic services.

Remuneration paid for domestic services is not subject to federal income tax withholding, unless both the employer and employee voluntarily agree to it. See Code section 3401(a)(3). The domestic employee may make a request for income tax withholding by completing Form W-4, "Employee's Withholding Allowance Certificate," and may also request advance payments of the earned income credit by completing Form W-5 if he/she is eligible. However, there are no similar exceptions for FICA and FUTA taxes.

Because the worker's services constitute domestic services, the employer is responsible for withholding the employee's share of the FICA tax if the worker was paid up to a specific income threshold amount in each particular year. The wage threshold for withholding FICA tax in a specific year may be found in that year's Publication 926, Household Employer's Tax Guide.