

SS-8 Determination—Determination for Public Inspection

Occupation

06THE Therapists

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 worker initiated the request for a determination of her work status as a developmental therapist in tax years 2017 to 2018. The firm's business is described as providing outpatient, developmental, occupational, physical, and speech therapy to children with delays and special needs.

The firm's response was signed by the president. The firm's business is described as the coordination of the provisions of pediatric therapy services for children with special needs, public school support services, and parent education and training services. The worker's services were that of a developmental therapist; she provided therapy to young children with special needs.

The worker indicated the firm provided client information and she provided developmental therapy services. The job assignments came from the firm; however, it was the worker that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered at the firm's clinic (50%), daycares (30%), and children's homes (20%). She stated there were two developmental therapy meetings she attended. The worker was required to perform the services personally.

According to the firm, there was no specific training and instructions given to the worker. The firm indicated the worker is not an 'evaluator' to determine the specific needs of the child(ren); but, is trained in early intervention. The job assignments were offered to the worker that were appropriate to her skills and training. The worker could accept or decline the assignment offered; if she accepted, then she contacted the family to schedule therapy. The worker determined the methods by which the services were rendered. Any problems or complaints encountered by the worker were directed to the state service coordinator at Developmental Disability Services (DDS) and the firm's program director who was also available to assist in resolving any problems. The services were rendered on a part-time schedule with the worker setting her own routine/schedule at a location that was a 'natural environment' of the child, such as home or school. The firm stated the worker was not required to perform the services personally; any additional personnel were hired and paid by the worker with DDS certifying therapists.

The worker stated that the firm provided her with an email, access to CDS website, and a badge. The worker indicated that she furnished nothing, she did not lease space, equipment, or a facility and she did not incur expenses in the performance of the job. The worker was paid an hourly wage; clients paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker responded that she was not at risk for a financial loss in this work relationship. The firm established level of payment for the services provided.

The firm indicated nothing was provided to the worker; however, she could access equipment and supplies at the firm's location but she would have to pay for them through a payroll deduction. The worker did furnish supplies, equipment, and materials used in her work. The worker did not lease equipment, space, or a facility, but, she did incur expenses in the performance of the job for the firm to process her billing and to acquire prescriptions and prior authorizations for services provided to families. The firm paid the worker for direct contact time with families and not for preparation of documentation. The billing was done through the firm and the clients paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The firm indicated the worker could be at risk for a financial loss in this work relationship and that she established level of payment for services provided.

Both parties concur that no benefits were extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm and worker disagree as to whether the worker was or was not performing same or similar services for others during the same time frame. The worker stated she purchased the firm's T-shirt and rendered services under the firm's name. The firm indicated the worker was a contract therapist, providing services under her own name.

The firm acknowledged that 'employee' is the default relationship for anyone coming into a work relationship with the firm. The firm stated that at the inception of the work arrangement with the worker, the worker had a full-time job and had a job as a trainer. The job with the firm, then became the worker's full time job. The worker was offered 'employment'; but, was unwilling to change her work relationship because of the work performed as a trainer. The worker, later on, requested to become an 'employee' of the firm; however, the firm declined, stating that the worker would have to apply for a position through the firm's hiring process, if there was an available position.

Analysis