

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MARTIN J. WALSH, Secretary of Labor,	)	
United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 21-cv-02213
v.	)	(KMM-TNL)
	)	
MINNESOTA LIVING ASSISTANCE,	)	
INC., and DOROTHY MUFFET, an	)	
individual,	)	
	)	
Defendants.	)	
	)	

CONSENT ORDER AND JUDGMENT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor, has filed a complaint under the Fair Labor Standards Act of 1938 as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), and Defendant Minnesota Living Assistance, Inc., has appeared by counsel, and agrees to the entry of this Consent Order and Judgment without contest. Defendant Dorothy Muffett, an individual, passed away on September 7, 2022 and is therefore no longer an appearing party in this action.

Defendant Minnesota Living Assistance, Inc. admits and the Court finds Defendant Minnesota Living Assistance, Inc. engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA during the relevant time period herein.

Defendant Minnesota Living Assistance, Inc. admits and the Court finds Defendant Minnesota Living Assistance, Inc. was an enterprise engaged in commerce or

in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA during the relevant time period herein.

Defendant Minnesota Living Assistance, Inc. admits and the Court finds Defendant Minnesota Living Assistance, Inc. was an employer as defined in 29 U.S.C. § 203(d) of the FLSA during the relevant time period herein.

Upon motion of attorneys for the Secretary and Defendant Minnesota Living Assistance, Inc. and for cause shown, it is:

ORDERED, ADJUDGED, AND DECREED, pursuant to section 17 of the FLSA that Defendant, Minnesota Living Assistance, Inc. its officers, agents, servants, and all persons acting or claiming to act on its behalf and interest be permanently enjoined and restrained from violating the provisions of sections 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the FLSA, in any of the following manners:

1. Minnesota Living Assistance, Inc. shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of its employees including, but not limited to, any of its employees working at Minnesota Living Assistance, Inc. d/b/a Baywood Home Care, or at any business location owned, operated, and/or controlled by Minnesota Living Assistance, Inc. and at any other business location at which its employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed.

2. Minnesota Living Assistance, Inc. shall make, keep, and preserve adequate records of its employees and of the wages, hours, and other conditions and practices of employment maintained by them including, but not limited to, any of its employees working at Minnesota Living Assistance, Inc. d/b/a Baywood Home Care, or at any business location owned, operated, and/or controlled by Minnesota Living Assistance, Inc. and at any other business location at which its employees perform work, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516. Minnesota Living Assistance, Inc. shall make such records available at all reasonable times to representatives of the Plaintiff.

3. Pursuant to 29 U.S.C. § 215(a)(3), Minnesota Living Assistance, Inc. shall not discharge or take any retaliatory action against any of its current or former employees because the current or former employee engages in any of the following activities:

- a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity,

policy, or practice of the Minnesota Living Assistance, Inc. or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA;
- b. Provides information to, or testifies before, any public agency or entity conducting an

investigation, hearing or inquiry into any alleged violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA, by the Minnesota Living

Assistance, Inc. or another employer with whom there is a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA.

4. Minnesota Living Assistance, Inc. shall not request, solicit, suggest, or coerce, directly or indirectly, any employee to return or to offer to return to the Minnesota Living Assistance, Inc. or to someone else for the Minnesota Living Assistance, Inc., any money in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of this Consent Order and Judgment or the FLSA; nor shall Minnesota Living Assistance, Inc. accept or receive from any employee, either directly or indirectly, any money in the form of cash, check, or any other form, for wages paid to said employee under the provisions of this Consent Order and Judgment or the FLSA; nor shall Minnesota Living Assistance, Inc. discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained money due to him from the Minnesota Living Assistance, Inc. under the provisions of this Consent Order and Judgment or the FLSA.

5. Minnesota Living Assistance, Inc. shall hire an independent, third-party agent (or attorney) knowledgeable of the minimum wage, overtime, and recordkeeping provisions of the FLSA and its regulations to perform an audit of Minnesota Living

Assistance, Inc. to determine compliance with the FLSA for the time period of September 7, 2022 to September 7, 2023. The audit shall include a review of time and payroll records and recordkeeping practices of Minnesota Living Assistance, Inc. for compliance, including, but not limited to, proper recordkeeping of hours worked, proper payment of the overtime premium for hours worked in excess of 40 in a workweek and proper payment of the required minimum hourly rate. The agent or attorney shall report the findings and recommendations, in writing, to Minnesota Living Assistance, Inc. If the audit determines that any employee was not paid the correct overtime premium or minimum wage, as required by the FLSA, Minnesota Living Assistance, Inc. shall pay all wages due and owing within 15 days of the audit's completion and note corrective action taken in the audit reports. Minnesota Living Assistance, Inc. shall make the audit reports available for review and copying to the Wage and Hour Division, U.S. Department of Labor, upon request. The audit shall be completed by December 1, 2023.

6. Minnesota Living Assistance, Inc. shall include in its employee handbook a notice to employees about the FLSA's minimum wage and overtime requirements.

7. Minnesota Living Assistance, Inc. shall provide all employees with a copy (or written links to the DOL website) of the U.S. Department of Labor, Wage and Hour Division's *Handy Reference Guide to the Fair Labor Standards Act, Employee Rights Under the Fair Labor Standards Act, Fact Sheet #22: Hours Worked under the FLSA, Fact Sheet #23: Overtime Pay Requirements of the FLSA, and Fact Sheet #56A: Regular Rate of Pay*, in English and Spanish, which are available on the DOL website. Minnesota

Living Assistance, Inc. shall provide these materials within 30 days of entry of the Consent Order and Judgment.

8. Minnesota Living Assistance, Inc. shall comply with the FLSA at all current and future establishments in the State of Minnesota.

9. Within thirty (30) days of this Order, the Secretary shall notify the U.S. Department of Labor's Chief Administrative Law Judge that this matter has been resolved and that it is withdrawing its assessment of the civil monetary penalties as provided for in that Case Number 1917982 (CMP Case ID 5906) and the matter is to be dismissed with prejudice.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the Act, in favor of the Secretary and against Minnesota Living Assistance, Inc. in the total amount of \$1,600,000.

10. The Secretary shall recover from Minnesota Living Assistance, Inc. the sum of \$800,000 in unpaid overtime compensation covering the relevant period, from July 17, 2018, to September 1, 2020, for Minnesota Living Assistance, Inc.'s current and former employees whose names are listed in the attached Exhibit A, and the additional sum of \$800,000 in liquidated damages.

- a. At the time of Minnesota Living Assistance, Inc.'s execution of this Consent Order and Judgment, Minnesota Living Assistance, Inc. shall deliver a preliminary payment in the amount of \$1,000,000 by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching "WHD Back Wage Payment – Midwest Region". Within 90

calendar days of the entry of this Consent Order and Judgment, Minnesota Living Assistance, Inc. shall deliver the first of 6 quarterly payments, each in the amount of \$100,000.00, by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching “WHD Back Wage Payment – Midwest Region”. These payments shall continue each 90 days, until paid in full. A seven calendar-day grace period shall be allowed for receipt of each payment that is required by this paragraph. If Minnesota Living Assistance, Inc. fails to make any payment within that seven calendar-day grace period, all remaining installment payments shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Minnesota Living Assistance, Inc. hereby expressly waives.

- b. Minnesota Living Assistance, Inc. shall also furnish to the Secretary the social security number and last known address for each employee named in Exhibit A within ten (10) days of execution of this Consent Order.
- c. Upon receipt of payment from Minnesota Living Assistance, Inc., representatives of the Secretary shall distribute such amounts, less appropriate deductions for federal income withholding taxes and the employee’s share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of section 16(c) of the FLSA.

Minnesota Living Assistance, Inc. remains responsible for the employer’s share of F.I.C.A. arising from or related to the back wages distributed by the Secretary.

- d. Neither Minnesota Living Assistance, Inc. nor anyone on its behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Order and Judgment. Any such amount shall be immediately paid to the Secretary for deposit as above, and Minnesota Living Assistance, Inc. shall have no further obligations with respect to such returned monies.
- e. Any monies not disbursed by the Department of Labor after three years from the date of payment by Minnesota Living Assistance, Inc., because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to section 16(c) of the FLSA.
- f. The provisions of this Consent Order and Judgment shall not in any way affect any legal right of any individual not named on Exhibit A, nor shall the provisions in any way affect any legal right of any individual named on Exhibit A, to file any action against Minnesota Living Assistance, Inc. for any violations alleged to have occurred outside the relevant period.

11. By entering into this Consent Order and Judgment, Plaintiff does not waive his right to conduct future investigations of Minnesota Living Assistance, Inc. for the time period after September 1, 2020, under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by any investigation regarding any time outside the relevant time period.

It is FURTHER ORDERED that all claims by Plaintiff against Defendant Dorothy Muffett, an individual, shall be dismissed with prejudice.

It is FURTHER ORDERED that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Dated this 19th day of January 2023.

s/ Katherine M. Menendez
Katherine M. Menendez
United States District Judge
District of Minnesota

Entry of this judgment is hereby consented to:

For Defendant:

Date 1/6/2023

MINNESOTA LIVING ASSISTANCE, INC.

s/ Henrietta Nayoh

Henrietta Nayoh
Its President/Owner

s/ Gregory L. Peters s/Corie J. Anderson

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WALSH, Secretary of Labor, United States

Department of Labor