

WORK - RIGHT TO RECEIVE WAGES
AND
PATIENT WORK PROGRAMS

THE LAW

Each patient shall...

"1. Have the **right to refuse** to perform **labor which is of financial benefit to the facility** in which the patient is receiving treatment or service. **Privileges or release** from the facility **may not be conditioned upon the performance of any labor** which is regulated by this paragraph.

Patients may **voluntarily engage in therapeutic labor** which is of financial benefit to the facility if such labor is **compensated in accordance with a plan approved** by the department and if:

- a. The specific labor is an **integrated part of the patient's treatment plan** approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;
- b. The labor is **supervised** by a staff member who is **qualified to oversee the therapeutic aspects** of the activity;
- c. The patient has given his or her **written informed consent** to engage in such labor and has been informed that such consent may be withdrawn at any time; and
- d. The labor involved is **evaluated for its appropriateness** by the staff of the facility **at least once every 120 days**.

2. Patients may also **voluntarily engage in non-compensated therapeutic labor** which is of financial benefit to the facility, if the conditions for engaging in compensated labor **under this paragraph are met and if:**
 - a. The facility has attempted to provide compensated labor as a first alternative and **all resources for providing compensated labor have been exhausted**;
 - b. Uncompensated therapeutic labor **does not cause lay-offs of staff hired by the facility** to otherwise perform such labor; and
 - c. The patient is **not required in any way to perform such labor**. Tasks of a **personal housekeeping** nature are **not to be considered compensable labor**.
3. **Payment to a patient** performing labor under this section shall **not be applied to costs of treatment without the informed, written consent** of such patient. This paragraph

does not apply to individuals serving a criminal sentence who are transferred from a state correctional institution under s. 51.37(5) to a treatment facility."

§ 51.61(1)(b), Wis. Stats. [Emphasis added.]

"LABOR PERFORMED BY PATIENTS. (1) Any **labor performed by a patient which is of financial benefit to the treatment facility** shall be conducted within the requirements under s. 51.61(1)(b), Stats., and this section.

(2) Patients may only be **required to perform tasks** that are equivalent to **personal housekeeping chores** performed in common or private living areas of an ordinary home....

(3) **Payment for therapeutic labor** authorized under s. 51.61(1)(b), Stats., shall be made in accordance with wage guidelines established under state and federal law.

(4) **Documentation shall be made in the treatment record** of any compensated, uncompensated, voluntary or involuntary labor performed by any patient.

(5) The document used to obtain **informed consent** for application of a patient's **wages toward the cost of treatment** shall **conspicuously state that the patient has a right to refuse consent** without suffering any adverse consequences."

DHS 94.15, Wis. Admin. Code [Emphasis added.]

DECISIONS

1. A patient was **encouraged** by his treatment plan to **seek employment**. This **was not "forced employment"** as the patient later claimed. He had, in fact, agreed to his treatment plan. (Level III decision in Case No. 02-SGE-05 on 3/19/03)
2. An ex-patient of a mental health complex complained about current **developmentally disabled residents** being **paid less than minimum wages** for their work in a sheltered workshop. The Department of Workforce Development (DWD) had **licensed and certified** that **sheltered workshop to pay sub-minimum wages**. Sheltered workshops that have been approved by DWD [or the federal Department of Labor] to pay sub-minimum wages are, by such approval, deemed in compliance with the client wage requirements of § 51.61(1)(b), Stats. The DHS 94 grievance procedure has no jurisdiction over issues of compliance with the federal Fair Labor Standards Act. (Level IV decision in Case No. 04-SGE-04 on 11/11/04)
3. The **geriatric residents of a nursing home** for elderly and developmentally disabled clients who **occasionally volunteer** to assist staff in **simple tasks for short periods** of time are **not doing work that is of financial benefit** to the facility. They are volunteering to do those tasks in order to have something to do. The facility is **not**

obligated to pay them wages under those circumstances. (Level IV decision in Case No. 04-SGE-06 on 3/29/05)

4. A man whose adult son had been protectively placed with him as an Adult Family Home provider **requested to be reimbursed from the county for the “respite” hours and mileage he had provided when the assigned respite staff did not show up** to take his son out. That issue is **not grievable** as a client rights issue. Rather, it is an issue between the provider/father and the county to work out. (Level IV Decision in Case No. 06-SGE-03 on 9/01/10)

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