

No. _____

In the

Supreme Court of the United States

Gennady Y. Paremsky,

Petitioner/Employee,

v.

Ingham County Medical Care Facility,

Respondent/Employer,

Wage And Hour Division,

Respondent/State Agency.

On Petition For a Writ Of Certiorari To The
Michigan Supreme Court

APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI

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Order**Michigan Supreme Court
Lansing, Michigan**

January 4, 2023

Elizabeth T. Clement,
 Chief Justice
 Brian K. Zahra
 David F. Viviano
 Richard H. Bernstein
 Megan K. Cavanagh
 Elizabeth M. Welch
 Kyra H. Bolden,
 Justices

164863

GENNADY Y. PAREMSKY,
 Petitioner-Appellant,

SC: 164863
 COA: 360482

v

Ingham CC: 21-000505-AA

INGHAM COUNTY MEDICAL CARE
 FACILITY,

Respondent-Appellee,

and

DEPARTMENT OF LABOR AND ECONOMIC
 OPPORTUNITY, WAGE AND HOUR DIVISION,
 Agency-Appellee.

/

On order of the Court, the application for leave to appeal the September 6, 2022 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

BOLDEN, J., did not participate.

Seal of the Michigan Supreme Court

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 4, 2023

/s/_____ Clerk

Court of Appeals, State of Michigan

ORDER

Brock A. Swartzle
 Presiding Judge
 Michael Kelly
 Michelle M. Rick
 Judges

Gennady Y. Paremsky v Ingham County Medical
 Care Facility
 Docket No. 360482
 LC No. 21-000505-AA

The motions to file late answers are GRANTED
 and the answers filed with the motions are accepted.

The application for leave to appeal is DENIED
 for lack of merit in the grounds presented.

/s/ Brock A. Swartzle
 Presiding Judge

Seal of the State of Michigan

A true copy entered and certified by Jerome W.
 Zimmer Jr., Chief Clerk, on

September 6, 2022

/s/

 Date

 Chief Clerk

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR
INGHAM COUNTY

GENNADY Y. PAREMSKY,
Petitioner/Employee,

OPINION & ORDER
CASE NO. 21-505-AA
HON. JAMES S. JAMO

v

INGHAM COUNTY MEDICAL
CARE FACILITY,
Respondent/Employer,

and

WAGE AND HOUR DIVISION,
Respondent/Agency.

At a session of said Court
held in the city of Lansing, county of Ingham, this
25th day of January, 2022.

PRESENT: HON. JAMES S. JAMO, Circuit
Court Judge

This matter comes before the Court on
Petitioner's claim of appeal following Wage and
Hour Division's (WHD) final decision and order
affirming that the Ingham County Medical Care
Facility (ICMCF) did not violate the Payment of
Wages and Fringe Benefits Act (the Act) and
dismissing Petitioner's claim.

Both parties requested oral argument under MCR 7.114. In accordance with MCR 7.1 14(A), this Court determines that the briefs and record adequately present the facts and legal arguments, and this Court's deliberation would not be significantly aided by oral argument. This Court will proceed on the briefs and record alone.

This Court, being fully apprised of the premises, **DENIES** Petitioner's appeal and **AFFIRMS** the final decision of the WHD. This Court also **DENIES** the ICMCF's request for sanctions.

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FACTUAL BACKGROUND

Petitioner was employed by the ICMCF in various roles from 1997 to 2020. On October 5, 2020, he was involuntarily terminated from employment. As a result of this involuntary termination, the ICMCF did not pay out Petitioner's "paid time off" (PTO) fringe benefits.

Petitioner filed a claim before the WHD alleging that ICMCF had failed to pay or otherwise withheld \$26,241.63 in PTO compensation, arguing that PTO is earned compensation which Petitioner had not forfeited. The ICMCF asserted that its written policy only provides for a PTO payout where an employee voluntarily terminates, and that since Petitioner was involuntarily terminated, he was not entitled to a PTO payout. The WHD found that the ICMCF's policy did only provide for a PTO payout where an employee voluntarily terminates, and contained no provision regarding a payout where an employee is

involuntarily terminated. Where the ICMCF's policy was silent, the WHD declined to require the payment of fringe benefits to an involuntarily terminated employee and found that the ICMCF had not violated the Payment of Wages and Fringe Benefits Act (the WFBA).

Petitioner appealed the WHD's decision, and an Administrative Law Judge was assigned. Petitioner and the ICMCF filed opposing motions for summary disposition. Following a telephonic hearing and consideration of the briefs, the ALJ issued a final decision and order on June 2, 2021, determining that the written policy of the ICMCF did not provide for payout of accrued PTO upon involuntary termination. As a result, the ALJ affirmed the WHD's determination that Petitioner was not entitled to a payout of his accrued PTO and that the ICMCF had not violated the Act. Petitioner filed a Request for Reconsideration and a Request for Recusal of the ALJ, both of which were denied on June 17, 2021. This appeal followed.

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STANDARD OF REVIEW

Jurisdiction in this Court is proper pursuant to MI Const. 1963 Art VJ §28. Article VI, Section 28 of the Michigan Constitution provides:

All final decisions, findings, rulings, and orders of any administrative officer or agency existing under the constitution or by law, which are

judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings, and orders are authorized by law, and, in cases in which a hearing is required, whether the same are supported by competent, material, and substantial evidence on the whole record.

A decision is authorized by law "unless it is in violation of statute, in excess of statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious." *Id.* A decision is arbitrary if it is "fixed or arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances or significance," and it is capricious if it is "apt to change suddenly, freakish or whimsical." *Roseland Inn, Inc v McClain*, 118 Mich App 724, 728; 325 NW2d 551 (1982). Substantial evidence is "the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-87; 682 NW2d 100 (2004). In reviewing administrative determinations, courts give due deference to the administration's expertise and generally will not displace an agency's choice between two reasonably differing views. *West Ottawa Education Assoc'n v West*

Ottawa Public School Bd of Education, 126 Mich App 306,313; 337 NW2d 533 (1983).

ANALYSIS

I. The Claim of Appeal

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Petitioner argues that the Final Decision is not supported by competent, material, and substantial evidence because the Decision "is based on a term, which is not in the policy, which the agency made up, and then denied Employee his pay based on this nonexistent term." Petitioner's Brief, p 6. The written policy at issue is contained in the ICMCF's 2018 Compensation Plan, which states:

An employee who has worked over twelve (12) continuous months will receive a lump sum payment for any unused paid time off due them if they provide a four (4) week notice prior to voluntary termination.

Petitioner seeks to read the 2018 Plan as requiring a "forfeiture statement," such that any employee who "did not quit without a 4-week notice, and did not voluntary (sic) terminate" would be entitled to the payout of any accrued PTO in the absence of a forfeiture of that PTO. Petitioner's Brief in Support, p 7. The term Petitioner alleges the Final Decision "made up" is the interpretation of this statement to pay accrued PTO "only" if an employee voluntarily terminates. The Final Decision disagreed with Petitioner's reading, and

found instead that the written policy functions as a conditional statement outlining under what circumstances a payout of accrued PTO occurs, that is, accrued PTO will be paid if (1) an employee of longer than 12 months (2) provides a four week notice (3) prior to voluntary termination. "The policy required payment of PTO only if the employee voluntarily terminated employment *and* provided a four week notice before leaving employment. There is no dispute that the Employee was involuntarily terminated." Final Decision p 2.

Petitioner further cites a provision of the ICMCF Employee Handbook which states: "Your final check for remaining PTO days, ... will be available two (2) weeks after you received your check for actual time worked." The Final Decision did not address this particular policy, however, the WHD determination found that it was inapplicable to Petitioner as a provision governing resignations and, as is undisputed in this case, Petitioner did not resign. Certified Record at 898. Again, there is no dispute that Petitioner was involuntarily terminated.

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The WHD and the ICMCF argue that "the written policy does not provide for a payout of accrued leave where an employee is involuntarily terminated," and since a written policy exists, the WFBA cannot be used to read in additional terms for payment of fringe benefits pursuant to MCL 408.473. The ICMCF points to *Carpenter v Flint School District*, 115 Mich App 683, 686-688; 321 NW2d 772, in which the Court of Appeals declined to award a fringe benefit where an employer's

written policy was silent as to the payment of fringe benefits under particular circumstances. In *Carpenter*, it was the payment of fringe benefits upon an employee's death to his widow, but the ICMCF argues the same principles apply here: where the written policies of the ICMCF are silent as to a payout of PTO when an employee has been involuntarily terminated, the WHD and the ALJ cannot award a fringe benefit not specifically provided for in those policies.

This Court finds that MCL 408.473 controls: "An employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or policy." The plain reading of the provision of the ICMCF's 2018 Compensation Plan is as a conditional statement: PTO will be paid if certain conditions are met. In this case, those conditions are: (1) the employee has worked more than 12 months with ICMF, (2) the employee provided a four week notice period, and (3) the employee voluntarily terminated. Petitioner has not met these conditions. This Court further finds that the provision of the ICMCF Handbook cited by Petitioner is irrelevant as governing resignations; a resignation is not at issue here, and references to terminations must be read in context- in this case, in the context of a resignation. As in *Carpenter*, there is no provision in either the 2018 Plan or the Handbook that provides for the payment of fringe benefits (here, PTO) under these circumstances (involuntary termination). The Court specifically finds that neither policy relied upon by Petitioner are read, in their plain language, as requiring "forfeiture statements," which require Petitioner to affirmatively forfeit his right to payment of accrued PTO; as stated

above, these written policies are conditional statements providing under which

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circumstances PTO will be paid, and Petitioner failed to meet the requisite conditions. Given the silence of the ICMCF's written policies, the WFBA cannot be used to read in terms requiring payment of fringe benefits in unaddressed circumstances. Therefore this Court finds that the Final Decision was based on competent, material, and substantial evidence on the whole record.

Petitioner further argues that the Final Decision was made in violation of the WFBA at MCL 408.474, which states:

An employer shall not withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit.

Petitioner argues that MCL 408.473 and MCL 408.474 require payment of fringe benefits to him because he earned these benefits through the course of his employment and because he had not forfeited payment of these benefits. Petitioner further argues that once PTO benefits are accrued, these benefits become compensation which must be paid upon termination absent an

employee's consent to withholding. The WHD and the ICMCF disagree, arguing that MCL 408.474 is inapplicable because it concerns benefits which are "due" to an employee, and here, the written policies of the ICMCF do not provide that the fringe benefit of a PTO payout is "due" to involuntarily terminated employees.

This Court finds that the ICMCF's written policy does not provide for the payout of PTO to involuntarily terminated employees, and thus PTO is not "due" to involuntarily terminated employees. MCL 408.474 is therefore inapplicable to Petitioner's claim. Although Petitioner repeatedly cites the language in MCL 408.474, arguing that a forfeiture statement is required before fringe benefit payouts can be denied, the inapplicability of this statute to this case makes these citations futile. Where Petitioner did not meet the conditional requirements to receive a PTO payout under the ICMCF's written policies, the fringe benefit of PTO was not due to him and thus no forfeiture statement was required. This Court finds the Final Decision was not made in violation of the WFBA.

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Petitioner also argues that the Final Decision was made upon an unlawful procedure because the WHD "did not follow the Agency's mandatory policies for adjudication of this case." Petitioner cites the WHD's Policy Manual, pages 76-78, and argues that had the procedures been followed, the WHD would have found that Petitioner "met all conditions to receive payment of a fringe benefit." WHD Policy Manual, A5.08. For

all the reasons discussed above, it is clear the Final Decision did analyze whether the fringe benefit was covered by a written policy and whether Petitioner "met all conditions to receive payment of the fringe benefit." *Id.* The Final Decision found that Petitioner did not meet all conditions to receive payment because Petitioner was involuntarily terminated. An adverse finding is not an unlawful procedure. This Court finds this argument is entirely without merit.

Petitioner further argues that the Final Decision was arbitrary and capricious because "[i]t is not based on the actual material facts of the case, or the actual terms in the [ICMCF's] policy. Rather, is (sic) based on the terms, which the Agency and Employer made up." Petitioner's Brief, p 48. As previously discussed, this Court has already found that the ICMCF, the WHD, and the Final Decision correctly interpreted the written policies of the ICMF in the 2018 Compensation Plan and the ICMCF Handbook, and that the policies cited by Petitioner regarding payout of PTO are inapplicable to Petitioner as an involuntarily terminated employee. This Court finds that this argument is entirely without merit.

Petitioner also argues that the Final Decision violated the Equal Protection Clauses of the state and federal constitutions, where Petitioner was allegedly treated differently from "similarly situated claimants when policies did not have a specific payout provision for already earned compensation, and they complied with terms otherwise." Petitioner's Brief, p 39. Petitioner cites

a list of cases in which the WHD upheld the payment of fringe benefits "absent any forfeiture terms under which they forfeit it, express signed forfeiture statements, or express statements permitting deductions." Petitioner's Brief, p 40. However, the Court finds that even a cursory review of the cases listed provides the key distinguishing

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feature: in this case, there was a written conditional statement under which employees were to be paid accrued PTO, and Petitioner did not meet the conditions required by the written policy. Again, Petitioner spends significant time on the idea of a forfeiture statement, however, as discussed above, MCL 408.474 is inapplicable in this case, and thus the matter of a forfeiture statement is irrelevant. Furthermore although Petitioner cites to specific employees of the ICMCF that were allegedly treated differently Petitioner provides no support for these assertions beyond the statements in his brief. This Court finds the Final Decision did not violate the Equal Protection clause of the state or federal constitutions.

Petitioner argues that the Final Decision violated his procedural due process rights because the agency "deprived [Petitioner] of his substantial earned compensation," deprived Petitioner of "the benefit of the application of the Agency's mandatory procedural policies," and deprived Petitioner of a meaningful opportunity to be heard by an impartial decision-maker where the decision-maker "made up a term" and "used this made-up term, not found in

[ICMCF's] policy, to deny [Petitioner] his earnings." Petitioner's Brief in Support, p 42-43. Furthermore, Petitioner argues that the Final Decision violated his substantive due process rights because the Decision was arbitrary and capricious.

Procedural due process requires "a party be provided notice of the nature of the proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful manner." *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 2q-214; 761 NW2d 293 (2008) There is no question that Petitioner received notice of the nature of the proceedings; Petitioner initiated proceedings. There is also no question that Petitioner had an opportunity to be heard before an impartial decision maker at a meaningful time and in a meaningful manner, having been provided the opportunity for briefing and for a hearing before an administrative law judge. This Court has already discussed Petitioner's argument that the ALJ "made up a term" and dismissed it as without merit. This Court has already discussed Petitioner's argument that the ALJ failed to follow the WHD Policy Manual and found

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it without merit. Finally, Petitioner fails to provide any support for his assertion that the ALJ was biased other than the fact that the ALJ ruled against Petitioner and speculative, unsupported statements regarding relationships between ICMCF employees and state employees.

Petitioner's procedural due process argument is thus entirely without merit.

To sustain a substantive due process claim, "the governmental conduct must be so arbitrary and capricious as to shock the conscience." A decision is arbitrary and capricious when it is "fixed or arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles circumstances or significance," and it is capricious if it is "apt to change suddenly, freakish or whimsical. *Roseland Inn*, supra, 118 Mich App at 728. Petitioner argues that the WHD's Final Decision so shock the conscience because it was made "without regard to rules and standards and without regard for the fact and circumstances," and because it was made "contrary to the law, the Agency's mandatory policies, and is based on the terms that the Agency made up." This Court has already discussed whether the Final Decision was arbitrary and capricious and found such an argument without merit. This Court has already found that the WHD's interpretation of the ICMCF's written policies were in accordance with the law and that Petitioner's arguments that the WHD "made up" a term and "aided and abetted" the ICMCF in wag theft remain without merit. Petitioner's substantive due process claim is thus also entirely without merit.

II. Sanctions

Both the Petitioner and the ICMCF seek sanctions against one another. The WHD's Brief is silent as to the issue. Petitioner argues that sanctions' are appropriate because the ICMCF's

position is without reasonable basis in fact and law. The ICMCF argues that sanctions under MCR 7.216(C) and MCL 600.2591, because the current case constitutes a vexatious and frivolous proceeding.

Having considered the arguments put forth by both Petitioner and the ICMCF, this Court decline to award sanctions for or against any party. The Court, having found in favor of the ICMCF and the WHD,

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finds that the ICMCF's position was not without reasonable basis in fact and law. The Court also finds that Petitioner had a right to judicial review of an adverse decision against him under MCL 24.301 *et seq.*, which has now been adjudicated. To the extent that the ICMCF believes it may have a cause of action under the Michigan Extortion Statute or the Michigan Professional Rules of Conduct, this Court declines to review issues on the limited appellate review before it and leaves the ICMCF to pursue whatever independent litigation it sees fit.

**THEREFORE IT IS ORDERED that
Petitioner's appeal is DENIED.**

**In compliance with MCR 2.602(A)(3), this
Court finds that this decision resolves the
last pending claim and closes the case.**

/s/_____
Hon. James S. Jamo
Circuit Court Judge

**STATE OF MICHIGAN
MICHIGAN OFFICE OF
ADMINISTRATIVE
HEARINGS AND RULES**

**IN THE MATTER OF: Docket No.: 21-007256
Gennady Paremsky,**

Petitioner

Case No.: 208084

v

Ingham County

Agency: Wage Hour

Medical Care Facility,

Respondent, Case Type: Wage and Hour

Filing Type: Determination

_____/

Issued and entered
this 2nd day of June 2021
by: Thomas A. Halick
Administrative Law Judge

**DECISION OF THE ADMINISTRATIVE LAW
JUDGE DENYING PETITIONER'S MOTION
FOR SUMMARY DISPOSITION AND
GRANTING RESPONDENT'S MOTION TO
DISMISS**

On May 7, 2021, Petitioner, Gennady Paremsky, filed Petitioner/Employee's Motion for Summary Disposition.

On May 17, 2021, Respondent, Ingham County Medical Care Facility, filed Respondent Ingham County Medical Care Facility's Response to Petitioner's Motion for Summary Disposition to be Granted in Favor of Respondent.

Respondent's Motion seeks judgment in favor of the non-moving party, under MCR 2.116(C)(10) and MCR 2.116.(1)(1).

On May 17, 2021, Respondent, Wage and Hour Division, filed "Wage and Hour Division's Response to Petitioner's Motion for Summary Disposition."

Material Facts Not Genuinely Disputed

Petitioner was employed by Ingham County Medical Care Facility (Employer). The Employer terminated Petitioner's employment. The Employee did not voluntarily terminate his employment. Petitioner claims he is entitled to be paid for unused paid time off (PTO). The Employer's written policy for payment of PTO states:

/21-007256

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"An employee who has worked over twelve (12) continuous months will receive a lump sum payment for any unused paid time off due them if they provide a four (4) week notice prior to voluntary termination."

Law and Analysis

1978 PA 390 provides:

"An employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy."
MGL 408.473

There is no dispute that the controlling, written

policy at the time the Employee was terminated did not provide for payment of PTO upon *involuntary* termination. The policy required payment of PTO only if the employee voluntarily terminated employment *and* provided a four week notice before leaving employment. There is no dispute that the Employee was involuntarily terminated.

1978 PA 390 does not provide a remedy for a claim of wrongful termination.

(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay. MGR 2.116(1)(1).

(2) If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party. MGR 2.116(1)(2).

It is concluded as a matter of law that the Employer did not violate 1978 PA 390 because the employer's written policy did not provide for payment of unused PTO upon involuntary termination.

IT IS ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion to dismiss is GRANTED.

This is a final order that closes the case.

/s/_____

Thomas A. Halick

Administrative Law Judge

[WHD] Claim #208084, Gennady Paremsky vs.
Ingham County Medical Care Facility
INVESTIGATIVE FINDINGS:

The allegation raised by the claimant through his counsel was that he is owed paid time off (PTO) and holiday pay at the time of termination. The claimant indicates he is owed paid time off (PTO) in the amount of \$25,607.87 (646.5hrs x \$39.61/hr.) at termination which was 10/5/2020 and holiday pay in the amount of \$633.76 (16hrs x \$39.61/hr.) for the Memorial Day, 5/25/2020, and Independence Day, 7/4/2020, holidays which was to be converted to PTO and paid at termination.

At the time the claim was filed, the claimant provided copies of the "Compensation Plan" issued on November 1, 2018 to management and confidential employees; a copy of a former employee handbook in place at the facility from 2003; copies of pay statements from prior pay periods; and correspondence between the claimant's counsel and both the facility and the facility's counsel.

The claim was opened for investigation and notification letters sent out to parties.

The claimant - through his counsel, provided information noted above, as well as past policies related to attendance, tardiness, and disciplinary procedures from 2000-2004. Position statements were also provided regarding why the claimed benefits were yet owed to him.

Claimant's counsel provided the following reasons as to why PTO time was due:

- Claimant counsel referenced an employee handbook issued circa 2003 and provided to him on his date of hire and provided under the subheading of "RESIGNATIONS":

"Your final check for remaining PTO days, longevity and pro-rated health insurance waiver (if applicable) will be available two (2) weeks after you received your check for actual time worked".

- As referenced from the Compensation Plan for Management and Confidential Employees document dated November 1, 2018:

- "An employee, whose service with the Facility terminates before completion of twelve (12) months of work, shall receive no paid time off pay." It then continues,
- "An employee who has worked over twelve (12) continuous months will receive a lump sum payment for any unused paid time off due them if they provide a four (4) week notice prior to voluntary termination."

The facility responded through its counsel and disputed the allegations and indicated the monies were not due based on policy. The facility's response included a copy of the current employee handbook dated 2019, a copy of the claimant's termination letter dated October 5, 2020, copies of the basis of the termination, copies of conflict-of-interest policies, and a copy of the compensation plan for confidential employees hired after 2003 which was signed by former facility

administrator Susan O'Shea dated February 26, 2004. Also provided for review was the aforementioned "Compensation Plan for Management and Confidential Employees" document; it contained the same PTO policy as the claimant's counsel provided. The policy signed in 2004 had the same payout language as the November 1, 2018 compensation plan.

The claimant was involuntarily terminated on 10/5/2020. The claimant did not voluntarily terminate his employment with the facility. The PTO policy did not address any other manner of termination or separation which would require payout of remaining benefits to an employee other than resignation.

Claimant's counsel indicates the 2003 employee handbook and then administrator Mark Steven's email referencing the November 1, 2018 compensation plan stating "...no one's benefit will be reduced, the only people who would be affected by the compensation plan are (1) people whose benefits would improve or the new hires." are the controlling documents. Counsel further states the 2018 plan does not apply as there were "promises" made via the Stevens' email and the 2003 handbook. While Mr. Stevens' email affirms that "no one's benefits will be reduced" it did not assure terms of the 2003 handbook - only the terms of the compensation plan signed by Susan O'Shea in 2004.

The compensation plan stipulates the accrual and usage of the benefit. It also stipulates the terms in which the benefit is paid out at resignation. The 2003 policy references "RESIGNATIONS" - and states "Your final check for remaining PTO days,

longevity and pro-rated health insurance waiver (if applicable) will be available two (2) weeks after you received your check for actual time worked." The 2018 compensation plan states that employees who have "worked over twelve (12) continuous months will receive a lump sum payment for any unused paid time off due them if they provide a four (4) week notice prior to voluntary termination."

/Claim #208084. Gennady Paremsky vs. Ingham County Medical Care Facility/

The definition of "resignation" according to Merriam-Webster is an act or instance of resigning something: surrender; and a definition of resign is "to give up one's position: quit".

The claimant did not quit or surrender his position, he was involuntarily terminated. The policies both reference resignation and voluntary termination - quitting.

Claimant counsel also noted that "the policies plain meaning as contained in Employee Handbook and 2018 Compensation Plan is that Employer not only pays unused PTO at termination to those who resign with a 4-week notice and work for more than 12 months, but also pays it to those who terminate for other reasons. Counsel claimed a statement in the handbook from the claimant's beginning year of employment in 2005 authorizing unused PTO payouts at separation is controlling. Claimant counsel noted that "It is an absurd result of faulted reasoning that Employer would make payouts only to those who work for more than 12 months when they resign with a 4-week notice." While counsel

considers the business' reasoning "faulted", an employer can dictate as to the specific terms of payout.

Claimant counsel argues that ambiguity in a written agreement goes against the document writer. The division does not find ambiguity in the written policy. The division's interpretation of the written policy is that it was the employer's intent to payout unused PTO to those individuals voluntarily resigning from employment with 4 weeks' notice. As stated in the Michigan Office of Administrative Hearings and Rules' Wage and Hour Digest under General Entries, "Act 390 cannot be used to enforce payment of a fringe benefit not found in a written contract or policy or create "missing language" in a policy." The division will not add language or assume the opposite is true if the written fringe benefit policy is silent on involuntary termination.

Claimant counsel also argues that other employees have been paid PTO in the past. The division does not have the legal authority to enforce past practice. The division only has the legal authority to enforce the language of a written contract or written policy.

Again, the policies reference only when an individual resigns and/or is voluntarily terminating with a 4-week notice. No notice was given as the claimant was involuntarily terminated. He did not resign and did not provide a 4-week notice of quitting.

Regarding the claim for holiday pay: there were holiday pay policies in place as shown via the

"Compensation Plan for Management and Confidential Employees". These policies indicate six recognized holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The policy indicates, "Employees not required to work on the recognized holiday shall be paid for the holiday. The Administrator shall determine the days which holidays shall be celebrated." The claimant alleged the Memorial Day and Independence Day holidays were not paid, however, upon review of pay information supplied, the claimant received his full salary for each pay period containing the relevant holiday. It should be noted that the claimant's salary was slightly higher during the pay period that the Memorial Day holiday fell because he was receiving some additional pay for working during the COVID-19 pandemic.

The claimant, through his counsel, stated there was an agreement in place which stipulated that as the claimant worked the holidays noted above, did not have the time off, and as such, 8hrs for each holiday would be placed into the claimant's PTO bank. This memorandum does exist and is part of the file. There was an agreement that stipulated the claimant would have additional PTO time placed in his "bank" for additional work performed either "afterhours" or on observed holidays.

The policy did not indicate that extra pay would be given if the holiday is worked only when the holiday is not worked. The fact that additional PTO was to be placed in the claimant's bank may have been authorized by the then administrator, however, it is a moot point because there is no

payout of remaining PTO benefits when an employee is involuntarily terminated . No monies are due regarding holiday pay.

Public Act 390 of 1978, The Payment of Wages and Fringe Benefits Act, Section 1 defines what fringe benefits are recognized: vacation pay (paid time off, etc.), holiday pay, sick pay, bonuses, and expense reimbursement. Section 3 of PA 390 of 1978 states that an employer shall pay to or on behalf of an employee, fringe benefits in accordance with the written contract or written policy. Plainly stated, whatever is in writing must be followed by the employer and would be enforced by this agency as written.

As the policy did not identify the disposition of remaining PTO benefits at the time an employee is involuntarily terminated (with or without cause), it only addresses that benefits are paid out to those who resign with a 4-week notice and work for more than 12 months the Wage and Hour Division does not have the ability to require payout as the policy does not require payout for those terminated for cause and is silent.

Claim #208084. Gennady Paremsky vs. Ingham County Medical Care Facility

The Act had not been violated. The business did not violate its own written policy. No monies are found due to the claimant based on the terms of the written policies related to PTO and holiday pay.

| CO. | FILE | DEPT. | CLOCK | VCHR. NO. | 056 |
|-----|--------|--------|-------|------------|-----|
| 9HU | 002519 | 717200 | | 0000430020 | 1 |

INGHAM COUNTY MEDICAL FACILITY
 3860 DOBIE RD
 OKEMOS, MICHIGAN 48864-3799

Earnings Statement



Period Beginning: 09/20/2020
 Period Ending: 10/03/2020
 Pay Date: 10/09/2020

GENNADY PAREMSKY
993 BRAY ROAD
WILLIAMSTON MI 48895

| Earnings | rate | salary/hours | this period |
|------------------|---------|--------------|-------------------|
| Regular | 3168.80 | 80.00 | 3,168.80 |
| Gross Pay | | | \$3,168.80 |

| Other Benefits and Information | this period | total to date |
|---------------------------------------|-------------|---------------|
| Lifetime Hours | 80.00 | 1,680.00 |
| PTO | 572.00 | |

Important Notes

BASIS OF PAY: SALARY

| CO | FILE | DEPT. | CLOCK | VCHR NO | 056 |
|-----|--------|--------|-------|------------|-----|
| 9HU | 002519 | 717200 | | 0000410020 | 1 |

INGHAM COUNTY MEDICAL FACILITY
 3860 DOBIE RD
 OKEMOS, MICHIGAN 48864-3799

Earnings Statement



Period Beginning: 10/04/2020
 Period Ending: 10/17/2020
 Pay Date: 10/23/2020

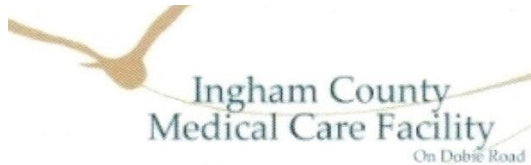
GENNADY PAREMSKY
993 BRAY ROAD
WILLIAMSTON MI 48895

| Earnings | rate | salary/hours | this period |
|------------------|---------|--------------|-----------------|
| Regular | 3168.80 | | 316.88 |
| Gross Pay | | | \$316.88 |

| Other Benefits and Information | this period | total to date |
|---------------------------------------|-------------|---------------|
| PTO | 10.50 | |
| Lifetime Hours | | 1,680.00 |

Important Notes

BASIS OF PAY: SALARY



MEMORANDUM

TO: Mark Stevens, Administrator
 FM: Gennady Paremsky, Director of Maintenance *G.P.*
 Date: 8/18/2020
 Re: Accumulated time off

I have a total of 10^{days} accumulated that I would like to add to my vacation time, by working on holidays and nighttime, weekend projects as follows:

- pipe replacement night project 2/28;
- heating, boiler issues for Rehab, after hours shifts, 3/21-22, 2 days;
- helping with dinners, April 4, 5, half day each, 1 total;
- helping with dinners, May 2 and 3, half day each, 1 total;
- May 25 Memorial Day holiday, working;
- helping with dinners, May 30-31, half day each, 1 total;
- kitchen suppression system activation, worked until 9:00 pm;
- July 4 holiday, working;
- 1 Friday off for July, not taken yet.

I will try to take these off by the end of the year, hopefully, as the restrictions get lifted for travel.

Approved:
Mark H. Stevens
 8-19-20

ICMCF Employee Handbooks Excerpts

(1) "RESIGNATIONS

The following check list is intended to aid you in completing tasks that are necessary in the process of termination."

RESIGNATIONS

The following check list is intended to aid you in completing tasks that are necessary in the process of termination. Should you have any questions, feel free to ask your Supervisor or contact the Human Resources Department.

(2) "9. FINAL PAYCHECKS

...

Your final check for remaining PTO days, longevity and pro-rated health insurance waiver (if applicable) will be available two (2) weeks after you received your check for actual time worked."

9. FINAL PAY CHECKS

Your final check for actual time worked, may be picked up on your next regularly scheduled pay day.

Your final check for remaining PTO days, longevity and pro-rated health insurance waiver (if applicable) will be available two (2) weeks after you received your check for actual time worked.

(3) "RESIGNATION

The following checklist is provided to aid you in completing tasks should you decide to resign or face termination."

RESIGNATION

The following checklist is provided to aid you in completing tasks should you decide to resign or face termination. Additional questions can be directed to your supervisor or HR department.

**ICMCF 2003 Compensation Plan For
Confidential Employees**

...

PAID TIME OFF

Employees earn Paid Time Off (PTO) based on the schedules listed below. Part-time employees earn paid time off on a pro-rated basis, such proration being based on the employee's budgeted FTE. PTO hours may not be used prior to the pay period in which they are earned. An employee's PTO credit accumulation rate shall be based on length of continuous service. All employees covered by this plan shall earn paid time off credits according to the following schedule:

| Continues Service | Hours Earned Per Pay FTE | Hours Earned Per Year |
|--------------------------------|-----------------------------|--------------------------|
| 1-2 Yrs. (0-6340 hours) | .0423 | 88 |
| | | |
| 15 Yrs. & Over (29121 + hours) | .0807 | 168 |

...

The Administrator in accordance with operating requirements shall approve leaves. The amount of paid time off charged to an employee during a leave will be equal to the number of hours for which the employee would have otherwise been paid during the period of absence.

Accumulated paid time off in excess of two hundred forty (240) hours will be paid at one hundred percent (100%) on December 1st of each year.

An employee, whose service with the Facility terminates before completion of twelve (12) months of work, shall receive no paid time off pay.

An employee who has worked over twelve (12) continuous months will receive a lump sum payment for any unused paid time off due them if they provide a four (4) week notice prior to voluntary termination.

HOLIDAYS

The following holidays are recognized:

New Year's Day

Memorial Day

Independence Day

Labor Day

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...

EMPLOYEES COVERED BY THIS COMPENSATION PLAN

THIS COMPENSATION PLAN has been designed for confidential employees hired after January 1, 2003.

By: /s/_____. Date: 2-26-04
Susan O'Shea

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2018 Compensation Plan For Managerial And Confidential Employees

...

PAID TIME OFF

Employees earn Paid Time Off (PTO) based on the schedules listed below. Part-time employees earn paid time off on a pro-rated basis, such proration being based on the employee's budgeted FTE. PTO hours may not be used prior to the pay period in which they are earned. An employee's PTO credit accumulation rate shall be based on length of continuous service. All employees covered by this plan shall earn paid time off credits according to the following schedule:

Management I

| Continuous Service | Hours Earned Per Pay Period | Hours Earned Per Year |
|-------------------------------------|-----------------------------|-----------------------|
| 1-3 Years (0 - 6,240 hours) | 5.23 | 136 |
| 4-6 Years (6,241 - 12,480 hours) | 5.85 | 152 |
| 7-9 Years (12,481 - 18,720 hours) | 7.08 | 184 |
| 10-14 Years (18,721 - 29,120 hours) | 7.70 | 200 |
| 15 Years+ (29,121+ hours) | 8.31 | 216 |

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... The Administrator in accordance with operating requirements shall approve leaves. The amount of paid time off charged to an employee during a leave will be equal to the number of hours for which the employee would have otherwise been paid during the period of absence.

Accumulated paid time off in excess of two hundred forty (240) hours will be paid at one hundred percent (100%) on December 1st of each year.

An employee, whose service with the Facility terminates before completion of twelve (12) months of work, shall receive no paid time off pay.

An employee who has worked over twelve (12) continuous months will receive a lump sum payment for any unused paid time off due them if they provide a four (4) week notice prior to voluntary termination.

HOLIDAYS

The following holidays are recognized:

New Year's Day

Memorial Day

Independence Day

Labor Day

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...

EMPLOYEES COVERED BY THIS COMPENSATION PLAN

THIS COMPENSATION PLAN has been designed for Management I, Management II, and Confidential employees. Employees hired prior to November 1, 2018 will maintain their current benefits unless the employee's benefit(s) would be improved by the November 1, 2018 "Compensation Plan for Management and Confidential Employees".

By: _____

Date: _____

Mark H. Stevens

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From: Mark Stevens
Sent: Friday, October 12, 2018 12:01 PM
To: Department Directors
<DepartmentDirectors@ingham-mcf.org>
Subject: DRAFT Compensation Plan for
Management and Confidential Employees (non-union
employees)
Sensitivity: Confidential

Hi Everyone,

Sibylle, Steve, and I have been working on a compensation plan for management and confidential employees (non-union staff). Please read through and edit the attached and bring it with you to next Friday's morning meeting to discuss... Right up front I want everyone to know that no one's benefits will be reduced, the only people who would be affected by the compensation plan are (1) people whose benefits would improve or (2) when we have new hires after this plan is finalized.

Please let me know if you have any questions, otherwise we'll discuss it next Friday.

Thanks,

Mark H. Stevens, MPA, NHA Administrator
Tel: (517) 381-6199
Fax: (517) 381-6201
<http://dobieroad.org>

STATEMENT OF SUSAN O'SHEA

I, Susan O'Shea, being duly sworn, state on the personal knowledge as to my own actions, and on information and belief as to the actions of others, as follows:

1. I was an Administrator at Ingham County Medical Care Facility from 1997 to 2010.

2. Gennady Paremsky worked for the Ingham County Medical Care Facility in the maintenance department during my tenure as the Administrator.

3. In about October of 2007, Gennady Paremsky, a Lead Technician in the Maintenance Department, turned in his Resignation letter.

4. Mr. Paremsky said he was resigning because he did not feel comfortable and secure in his employment due to unreasonable remarks of the HHH Director of Building Services despite Mr. Paremsky's proper performance of his Lead Technician's duties.

5. I met with Mr. Paremsky to ask if the ICMCF can continue securing his services as a specialist for our building and equipment maintenance.

6. Gennady had proved to be a very valuable ICMCF team member and provided quality building and equipment services.

7. Gennady has an unsurpassed knowledge of all aspects of the building maintenance, building equipment, and construction process, which is backed by his Mechanical Engineering Degree and building maintenance work experience.

8. By 2007, Gennady Paremsky had an extensive experience with the building equipment and maintenance of the facility, which was about a 30-year old building, as he worked as a Technician and Lead Technician for approximately eight years.

9. Gennady has a high degree of work ethics and integrity.

[Page] 1, SO [Initials]

10. Gennady's dedication to the residents and staff was extremely evident - he was always available to assist with maintenance issues even outside his work hours and was extremely kind and accommodating to residents, visitors, and co-workers.

11. Mr. Paremsky possessed specialized knowledge and skills, which allowed him to identify the issues before ICMCF engaged outside contract services, and his employment resulted in significant savings to the ICMCF over the years.

12. It was advantageous for ICMCF to have Mr. Paremsky to oversee its building services and equipment, and I asked him how we could accommodate him in his employment with the facility so that he did not leave, but stayed, and

continued providing services for the ICMCF building and equipment maintenance.

13. Mr. Paremsky said it was important to him to have stability in his employment so that he would not be unreasonably and adversely treated, and also expected respect and reasonableness from fellow co-workers and supervisors.

14. I assured Mr. Paremsky that no one at the facility would unfairly treat him or unfairly terminate his employment, as long as he continued to provide maintenance services and oversee the facility's building and equipment.

15. As a Lead Technician, Mr. Paremsky not only was responsible for overseeing the building and equipment maintenance, but he also actively assisted with supervision of maintenance technicians, so he qualified for and I offered him a position of a Maintenance Supervisor on 2-22-2008, later reclassified as a Director of Maintenance.

16. The employment of Gennady Paremsky, a key management employee, on whom the facility's proper operation depended, and whom I requested to head the Maintenance Department, was not to be terminated other than for a proper cause. Based on

[Page] 2, SO [Initials]

Gennady's skills, character, and dedication, this was highly unlikely. This understanding was made clear during our meetings.

17. Mr. Paremsky shared his October 5, 2020 termination incident with me, and I was

deeply distressed as I know him as a person of integrity, which I had always valued.

19. Under my tenure as Administrator, and during the time Gennady Paremsky was hired and worked as a Director of Maintenance, the PTO procedure for Management employees who resigned or were terminated was to pay out the unused earned PTO, unless those employees quit without a notice or worked for less than a year.

State of South Carolina, **By: /s/_____**
Susan O'Shea

County of Greenville

Subscribed and sworn to by Susan O'Shea before me on the 2[nd] day of September, 2021.

Signature____/s/_____

Printed name: Kathleen Osorio

Notary public, State of South Carolina, County of Greenville

My commission expires July 14, 2030.

[Seal of a Notary Public]

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