

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CA0798
)	EEOC NO.: 21BA12823
JOHN W. JONES,)	ALS NO.: 12-0317
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of John W. Jones (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CA0798 and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of the Petitioner’s charge for **LACK OF JURISDICTION** is **SUSTAINED**.

DISCUSSION

On July 24, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that the State of Illinois Department of Human Services (“DHS”) discriminated against him because of his age and race, and retaliated against him, by cancelling his referral contract, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).

On February 22, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner’s charge relates to his work as a psychiatrist, paid by DHS to perform disability examinations. But Petitioner was not a DHS employee, he was an independent contractor. Section 2-101(A)(1) of the Act defines an employee as “[a]ny individual performing services for remuneration within this State for an employer.” To determine whether a worker is an employee, we look both to the element of remuneration, and to the common-law factors. See Wanless v. Illinois Human Rights Comm’n, 296 Ill.App.3d 401, 695 N.E.2d 501 (1998). Common-law factors include “the amount of control and supervision, the right of discharge, the method of payment, the skill required in the work to be done, the source of tools, material or equipment, and the work schedule.” Bob Neal Pontiac–Toyota, Inc. v. Industrial Comm’n, 89 Ill.2d 403, 410, 433 N.E.2d 678 (1982). Of these, control of the manner in which work is done is considered the most important. Here, Petitioner performed psychiatric examinations in his own office without direct supervision by DHS, and was paid on a fee-

¹ In a request for review proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

per-service basis. Records showed that between December 2009 and September 2011, Petitioner was paid only \$1430 for his services. These elements indicate that Petitioner was an independent contractor rather than an employee.

Section 8–102 of the Act grants the Commission the power to hear and decide complaints filed in conformity with the Act. Because Petitioner was not a DHS “employee” within the meaning of the Act, Respondent lacked jurisdiction over the charge.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent’s dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner’s charge is hereby **SUSTAINED**.
2. This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Illinois Department of Human Services as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 10th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim