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**Comptroller**

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June 23, 2011

Mr. Fred A. Stein, Vice President  
Family Aides, Inc.  
120 West John Street  
Hicksville, NY 11801

Re: Limited Audit of Family Aides, Inc. 2007 and 2008 Compliance with the Nassau County Living Wage Law

Dear Mr. Stein:

A limited compliance audit was performed of contract #CQSS07000152 between Family Aides, Inc., ("Family Aides") and Nassau County. The objective of this audit was to determine whether Family Aides was in compliance with the Nassau County Living Wage Law ("Law") and the related Rules.<sup>1</sup> The review period was calendar years 2007 and 2008. To accomplish our objectives, we reviewed Family Aides' pertinent books and records and interviewed personnel.

Based on our limited audit, our findings and recommendations are as follows:

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<sup>1</sup> "Nassau County Living Wage Law," Nassau Co. Misc. Laws, Title 57 (2007) § 3(b). The Law and Rules can be found on the Comptroller's website at: <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>.

## **Audit Finding (1):**

### **Compensated Time Off**

Family Aides did not provide its covered employees with compensated days off in compliance with the Law. The Law requires employers to provide “no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee’s request. Full time employees shall accrue such leave at a rate of one day per month of full time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees.”<sup>2</sup>

Family Aides computed compensated time off entitlements semi-annually by determining the average number of hours worked weekly. If the average was below 20 hours, no compensated time off was accrued. The methodology used resulted in Family Aides under accruing leave hours because employees who sometimes worked 20 or more hours in a week, but who averaged less than 20 hours per week, were not granted compensated time off to which they were entitled.

We reviewed the full year 2007 calculations for all 41 covered employees and determined that 12 employees were underpaid a total of \$867.49. We also reviewed the full year 2008 calculations for all 66 covered employees and found that 12 employees were underpaid a total of \$744.91. The largest underpayment for any one employee was \$214.20.

### **Audit Recommendations:**

Family Aides should:

- a) reimburse its employees for the underpayments in compensated time off for the audit period; and
- b) provide proof of payment to the Comptroller’s Office when completed.

If Family Aides continued to use the incorrect methodology after 2008, it should recalculate the compensation due to employees for the subsequent periods using the proper methodology and determine if any employees are due additional accrued hours. It should pay the employees any amounts owed and provide the Comptroller’s Office with the recalculations and proof of payment.

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<sup>2</sup> “Nassau County Living Wage Law,” Nassau Co. Misc. Laws, Title 57 (2007) § 3 (b). The Law and Rules can be found on the Comptroller’s website at: <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>.

## **Audit Finding (2):**

### **Living Wage Rate**

Family Aides did not pay the proper wage/benefit rate required by the Law. The Law requires that:

“Employers shall pay their employees no less than the Living Wage for each hour they perform County work and either provide them benefits or supplement their hourly wage rate by an amount no less than the benefits supplement rate.”<sup>3</sup> During the audit period, the Living Wage from January 1, 2007 to July 31, 2008 was \$9.50 per hour and the benefits supplement rate was \$1.50 per hour, aggregating \$11.00 per hour; from August 1, 2008 to December 31, 2008 the Living Wage was \$10.50 per hour and the benefits rate was \$1.55 per hour, aggregating \$12.05 per hour.

We tested wages paid in 2008 for 21 of the 66 covered employees and found that two employees’ wage rates were below the August 1, 2008 Living Wage Rate. Their wage rates had not been adjusted to reflect the August 1, 2008 increase. We then reviewed Family Aides’ Weighted Average Wage Report<sup>4</sup> for all employees for years 2007 and 2008. We noted that the average rate paid to some employees was, at times, less than the Living Wage rate. We identified underpayments totaling \$1,131.72 to 12 employees and provided details to Family Aides for its review and comment. Prior to our audit, Family Aides had made corrective payments totaling \$64.70 to two of the employees, but still owed 10 employees a total of \$1,067.02. Family Aides made retroactive payments totaling \$1,039.01 to nine of the employees on May 21, 2010.

We reviewed Family Aides’ calculations and verified that the payments were made. We found the following discrepancies with regard to the payments:

- Family Aides did not include reimbursement for an underpayment to one employee for the week ending December 26, 2008 and owes the employee an additional \$5.25.
- Family Aides owed an employee an additional \$11 per day for two days worked during the week ending October 31, 2008. It paid the increment for only one day’s work and owes the employee an additional \$11.00.
- Family Aides paid one employee \$8.75 per hour for 5 hours instead of \$11 per hour, resulting in unpaid wages of \$11.26.

### **Audit Recommendation:**

Family Aides should reimburse the employees for the wage underpayments and provide proof of

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<sup>3</sup>“Nassau County Living Wage Law,” Nassau Co. Misc. Laws, Title 57 (2007) § 3(a) The Law and Rules can be found on the Comptroller’s website at: <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>

<sup>4</sup> The Weighted Average Report shows, by employee, the covered hours worked weekly and the average rate paid for the week.

payment to the Comptroller's Office when completed.

Given the number of errors that occurred for 2007 and 2008, Family Aides should perform a self-audit of 2009 and 2010 wages and compensated time off. It should pay the employees any amounts owed and provide the Comptroller's Office with the results and proof of payment within 30 days for our review. We may perform a limited audit of 2009 and 2010 to verify compliance with the Law.

The issuance of a final Audit Report that includes findings of non-compliance constitutes the first written notice of a violation of the Law. As such, if the employer does not take corrective action to cure any breach within thirty (30) days of receiving the final Audit Report, the County has the right to pursue any/all rights and remedies under the applicable laws or under the referenced contract(s) including, but not limited to, imposing fines and/or penalties outlined in the Law.<sup>5</sup>

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The matters in this report have been discussed with the officials of Family Aides, Inc. during the course of this audit. On February 24, 2011, the Comptroller's Office submitted a report in draft for Family Aides' comments. On April 12, 2011, an Exit Conference was held and Family Aides provided its comments on April 25, 2011. Family Aides' comments and our response to those comments have been included as an appendix to this final report.

Sincerely,



Joy M. Watson  
Deputy Comptroller  
Audit and Special Projects

JMW:AS

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<sup>5</sup> "Nassau County Living Wage Law," Nassau Co. Misc. Laws, Title 57 (2007) §7 (d).

APPENDIX



Accredited by the Joint Commission  
on Accreditation of  
Healthcare Organizations



**FAMILY AIDES, INC.**<sup>TM</sup>  
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April 25, 2011

Joy M. Watson, Esq.  
Deputy Comptroller, Audits & Special Projects  
Nassau County Office of the Comptroller  
240 Old Country Road  
Mineola, New York 11501

Dear Ms. Watson:

This letter is in response to your February 24, 2011 letter containing your findings and recommendations following a limited compliance audit of the contract for the provision of personal care services between Family Aides, Inc. and Nassau County, for the audit period 2007 and 2008.

We do not concur with your conclusion that Family Aides did not provide compensated days off in compliance with the Living Wage Law (the "Law"). Our position is that Family Aides provided compensation in compliance with the Law, though it may not have been in accordance with the specific formula that the Comptroller endorses. Since this is not specifically prescribed under the law and it was never provided to Family Aides at the inception of the Law nor at any time during the audit period, to conclude that we have not complied is in error.

The Law states that employees who work twenty or more hours per week are entitled to accrue compensated days off "proportionally to the rate of accrual for full-time employees", however neither the Law nor the Rules of the Comptroller make clear how compensated days off must be calculated for such part-time employees. In the absence of any specific guidance from the County as to how such days were to be calculated, Family Aides adopted a method of calculation that it had been using in other counties that had virtually identical compensated days off requirements, and that had been acceptable to those counties in the past. Although Nassau County is not bound by the interpretations of its neighboring counties, since Nassau Law was silent on this point, and

the County had not provided employers with any formula or calculation methodology to be used for the calculation of compensated days off for part-time employees,<sup>1</sup> it was not unreasonable for Family Aides to adopt a formula for its Nassau County aides that was accepted by other counties that had adopted living wage laws earlier than Nassau County.

Please note that the formula Family Aides had been using resulted not only in the underpayment to a handful of employees (who have all now been paid), but also in an *overpayment* to some employees who, under the Comptroller's formula would not have been entitled to compensated days off. As stated earlier, it was not Family Aides' intent to shortchange any employees – it was merely using a formula believed to be reasonable, which, when compared to the Comptroller's formula, benefitted some employees and not others.

It should be noted that since the County prescribed its calculation methodology, Family Aides has retroactively made the appropriate adjustments in its employee payouts for compensated days off and has revised its policy in compliance to the prescribed calculation methodology. Also, Family Aides has not sought to recoup any overpayment from those whom the Comptroller would view as ineligible for compensation but those employees will no longer be entitled to compensated days off under the revised calculation methodology in the future.

In response to your specific audit recommendations, please note the following:

**Audit Finding 1:** Family Aides should: a) reimburse its employees for the underpayments in compensated time off for the audit period; and b) provide proof of payment to the Comptroller's Office when completed.

Completed. Family Aides has reimbursed its employees for the underpayments in compensated time off for the audit period and proof of payment has been provided to Nassau County Living Wage Unit.

**Audit Finding 2:** Family Aides should reimburse the employees for the wage underpayments and provide proof of payment to the Comptroller's Office when completed.

The payments in question are as follows:

one employee owed additional \$5.25  
one employee owed additional \$11.00  
one employee owed additional \$11.26

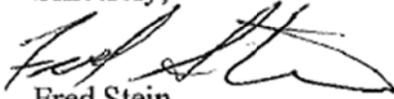
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<sup>1</sup> Apparently as a result of its audit findings that numerous employers were using methodologies for making this calculation that were other than what the Comptroller had in mind, the Comptroller has now provided auditees with sample calculation formulas showing how it wishes this computation to be done.

These payments have all been made and proof of these payments has been provided to Nassau County Living Wage Unit. A self-audit is in process for 2009. For the year 2010, Family Aides utilized the Nassau County prescribed methodology.

We trust this satisfactorily addresses all issues raised in your audit. If you require further information, please do not hesitate to contact me at (516) 942-7003, extension 376.

Sincerely,



Fred Stein

***Auditor's Follow-Up Response:***

*Family Aides has provided proof of payment to the Comptroller's Office for the employees who were underpaid in 2007 and 2008. We disagree with Family Aides' statement that the method to determine compensated days off is not prescribed under the Law. As recommended, Family Aides should complete its self-audit of 2009 to determine if additional monies are due employees based on its recalculation of compensated time off using the correct methodology. We also recommend that Family Aides provide to the Comptroller's Office the findings of its review. Proof of payment (if any) to any other employees who may have been underpaid should be provided within 30 days of receipt of this report.*

