

First Draft Covering immigration
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Translation credit: Howard Liu, Zishun Ning

The 24-Hour Lives of Home Health Attendants in New York City

Zhu Chen wakes up every day at 6 am to start her workday, just like she did when she served as a TK for nineteen years. Except that she wasn't really waking up. Working as a live-in home attendant, she would rarely get a full night's sleep, if ever. She spent the night awake tending to her patient's needs, turning them over to prevent them from getting bedsores or walking them to the bathroom.

Zhu Chen is one of many home attendants in New York City who work 24-hour days — and do not get compensated appropriately for it. Home attendants help take care of a patient in their home under the supervision of a licensed medical practitioner. Women comprise 90 percent of home health aides in New York are women, and 60 percent are immigrants. This vulnerable intersection of identity means women of color often face precarious situations like wage theft, forced labor, or demands for working overtime with little to no compensation, as well as other exploitative work conditions.

Before she retired in 2017, Chen was working 24-hour days for the Chinese American Planning Council-Home Attendants Program (CPC-HAP), which has around 4,500 care workers under their belt in the New York City area. The planning council portrays itself as a friend to their home health aides and a crusader for fair pay. According to the CPC's website, the council has the public support of senators like Julia Salazar of New York's 18th district and John C. Liu of New York's 11th district. Despite the support from progressive, democrat politicians, activists, and CPC home health aides disagree that the CPC has been a friend to any of them.

In January, New York State Assembly Member Ron Kim released a report accusing The Chinese American Planning Council of engaging in widespread wage theft. The organization, which employs 4,500 home health aides in New York City, was accused of blocking access to courts for employees attempting to win lost wages back. According to the 'Aint I a Woman' campaign, which comprises home attendants fighting back against the CPC, the council has amassed \$90 million in stolen wages OVER 7 years now, while also doing little to reform what activists describe as a brutal 24-hour workday cycle for immigrant home health aides.

David Lee is Ron Kim's Legislative Director and the author of the report detailing the council's exploitative practices. Kim describes the council as a "major actor in New York State politics." The Council, Lee argued, had acted as a prominent lobbyist in Albany since the sixties. "They have attempted to rebrand themselves as a force for progressive good," he said.

The CPC has many roles. It is a 501c3 non-profit that has many other smaller non-profits and LLCs under its umbrella. This includes, among others, a large real estate portfolio that is building high rises across the

city. One of the non-profits that fall under the wider umbrella of CPC is the CPC-Home Attendants Program (CPC-HAP).

According to Lee, under state law, workers must have at least five hours of sleep and enough time in the day for uninterrupted meal time and if they are deprived of those rights, then they must at least be compensated for their time. In response to state law, the CPC and SEIU 1199, the home care attendants union, agreed to a mandatory arbitration clause and collective bargaining. Mandatory arbitration refers to a private settlement proceeding to settle disagreements for two different parties. In mandatory arbitration, parties have to agree to have their cases reviewed by an arbitrator who makes all the final outcomes decisions in a case. With collective bargaining, people, through their respective unions, negotiate terms of their employment contracts which include pay, benefits, hours, and leave. Lee asserts that this clause has been a disaster for workers seeking justice. One of the downsides of mandatory arbitration is that the process of arbitration requires workers to forgo certain rights such as the ability to sue their employer. Further, mandatory arbitration processes have been criticized for being biased towards the corporate entity as opposed to the employee.

“They incorporated this mandatory arbitration clause without informing the workers of what is going on. Workers tried to sue in court and didn’t succeed in getting rid of the clause. It is problematic because arbitration is posed as a tool for workers’ grievances. However, statistically speaking, employers almost always win. This is a forum designed to be disadvantageous to the worker. When workers win, it’s never the full amount they are owed,” says Lee.

SEIU 1199 was contacted but did not respond to our request for comment.

According to the report Lee authored, workers attempting to sue the CPC for unpaid wages are filing claims under the Wage Theft Prevention Act, Minimum Wage Act, and Department of Labor Minimum Wage Orders, the Fair Labor Standards Act, Home Care Worker Wage Parity Act.

Zhu Chen is among the workers fighting the CPC in court. On a recent morning, Chen recounted her time at the CPC-Home Attendants Program (CPC-HAP), where she worked nineteen of the twenty-three years that she has lived in the United States. Chen was assigned to her first patient in 1999. The patient required 24-hour care. Chen said that she barely slept in the first two years that she assisted the patient; she was paid \$10 an hour during the day and would get a flat fee of \$16 for nighttime work.

The pay got worse in the 2000s. Chen was paid \$15 an hour for a thirteen-hour shift; the rate remained the same when she was worked 24-hour shifts. THE CPC scrapped the paltry \$16 flat fee for her night shift work.? In 2014, she once received a paycheck from the Department of Labor for \$23 after working 24-hour shifts for four days. Her colleague received \$400.

Another worker, Lai Chen reported that she also got a check from the DOL for \$200. “I never worked for the government, why did I receive this check?” Lai Chen says.

Upon requesting for comment, the Department of Labor said, “NYS Department of Labor does not disburse payments from private class action settlements.”

The Department of Labor did not respond to further inquiries and clarifications.

She called the CPC accounting department to ask for answers. They informed her it was for overtime. “Overtime? I told them I worked for CPC for so long and so much overtime, why did I only get \$200?” Lai Chen says.

However, when she called the DOL, they informed her that she did not have overtime. There was nothing about a 24-hour shift or overtime written on the check. The conflicting information was given by the CPC and the DOL confused her.

She later found out that there was a group of workers who had complained about the CPC. The DOL had apparently told the CPC to set aside two million dollars for the workers. The \$200 check was essentially a settlement from a class-action lawsuit from other workers. It is unclear, however, why some workers like Zhu Chen received a far smaller amount.

*** I’ve reached out to DOL again to a different email so waiting until Friday to see if there’s a response

In 2015, other workers at CPC-HAP started complaining about being only paid for 13 hours, despite working 24-hour shifts. The CPC issued forms so workers could record their hours to receive full payment. But when Chen started recording all the times she had to wake up at night to take care of the patient, the CPC called up the family and said that the patient should be placed in a nursing home instead.

The CPC’s suggestion came as a shock to the relatives. Like many East Asian families, they felt **compelled** to take care of their elders. After this phone call, Zhu Chen said, the dynamic with the family changed “They started becoming extremely hostile,” Zhu Chen says. The work expectations remained just the same. After a restless night, Chen would help her patient wake up, use the bathroom, and wash their face and hands in the morning. In the afternoon, she’d prepare a nutritious meal for her patient and watch tv whilst also helping the patient go to the restroom when needed. In the evening, she would prepare a hearty dinner, bathe the patient and help them prepare for bed. Chen said she was also responsible for taking the patient to hospital visits. Over time, the work took a toll on her hands. She now has trigger fingers, a condition that causes fingers to get stuck in a bent position, usually stemming from overwork.

She retired five years ago, after suffering from occupational injuries that have gnarled her fingers and plagued her back. At 70 years old, Zhu Chen is now fighting against the CPC over her unpaid wages.

According to Zishun Ning, an organizer at the Chinese Staff and Workers Association and the Ain’t I a Woman campaign, Zhu Chen’s case is not an isolated one. Ning argued that many home attendants have developed insomnia and painful injuries in their hands and feet. They cannot spend time with their families or friends due to their 24-hour workday. “[It’s] a slow torture,” he said.

The CPC, Ning added, is trying to defuse responsibility by stating that they don't have money and that they need more state funding.

“To say that money is an issue is the logic of a bandit holding patient and worker hostage. It's ironic because the CPC uses the banner of “ Stop Asian Hate” and yet, they are perpetuating anti-Asian violence against Chinese women,” says Ning.

Lai Chen is another home health attendant fighting against the CPC. Unlike Zhu Chen, Lai Chen currently works as a home attendant under CPC-HAP. She is one of the lead organizers in the fight for justice for her fellow home health attendants who feel that they have been stiffed by the CPC.

Lai Chen came to the United States in 1988. Prior to working as a home health attendant, she worked at a garment factory.

“Before I came to the US, I thought it was going to be very beautiful. But when I arrived at my apartment, there were all these cockroaches and I already regretted it but it was too late,” Lai Chen says.

In 2001, she started working for the CPC as a home health attendant to support her family. She says at first, working for the CPC as a home health attendant offered benefits that helped her family. Because the CPC was unionized with SEIU 1199, health insurance was provided for her entire family. Although she says that the family health insurance was eventually cut and health insurance was only provided to her.

In 2018, she was working a 24-hour shift for a patient and documented the number of times she woke up in the night for work. Her patient also signed off on this form. After handing in the form to the CPC, she was fired. She was told it was the patient's decision, which confused her as they had a good relationship. After getting on a call with the patient, CPC, and the union representative, she found out that the CPC had actually tricked the patient into terminating her by saying that Lai Chen was having a hard time waking up in the night and that maybe they should just terminate her. While she was eventually re-hired, the situation was stressful and caused her to fear losing her health insurance.

Like Zhu Chen, Lai Chen's day started early in the morning and would involve a full day of cooking meals, and taking her patient grocery shopping, errand running, doctor's appointments, and church. But she was also a friend to her patient. One of her patients for example could not speak, she says, so she would engage in conversation with her and tell jokes to keep her company. A doctor had once told her, “ We see the patient for two minutes, but you [home health aides] take care of the patient all the time.”

At 10 pm, the patient would fall asleep. Lai Chen would also spend the night turning her patient to different sides, causing her to develop chronic pain in her arms and back.

The 24-hour shift work took a toll on her sleep. She developed insomnia as a result and despite no longer working 24 hour days, still has insomnia. She says her medicine prescribed was \$600 dollars so she could not afford it.

She said the working conditions under the CPC were especially dire at the beginning of the pandemic. At first, she says, they did not have any personal protective equipment (PPE). When they finally did get PPE,

Lai Chen says it was in the form of “poorly made masks with paper-like material probably made in a garment factory.” Lai Chen says that to show how ridiculous the masks were, organizers and workers like her and others at the Ain’t I a Woman campaign posted photos of them wearing the masks. She says while laughing that they made masks using towels and asked other workers which looked more protective — the CPC issued masks or the towels. She said most of the workers she asked said the towel masks looked more protective.

Wayne Ho, the CEO of the CPC, responded to allegations of wage theft and exploitation of home attendants by saying this:

“ CPCHAP is in full support of ending our 24-hour shifts and providing two 12-hour split shifts going forward and would do so ourselves if we could; however, despite our best attempts, we have been unsuccessful because of State policies and Medicaid regulations. That is why we have requested intervention from legislators and have been advocating on these issues since 2017.

As the State legislative session is underway, we will continue to work with allies, workers, and patients to advocate for the Governor and State Legislature to end 24-hour shifts and to ensure Fair Pay for Home Care, which will build a just and caring economy in New York State.. ”

Lai Chen says that a group of organizers like her protested in front of the CPC headquarters and delivered a letter to Ho demanding an apology for the stolen wages. She said they never heard back from him.

As for both Lai and Zhu Chen, they are continuing to fight CPC in the courts.

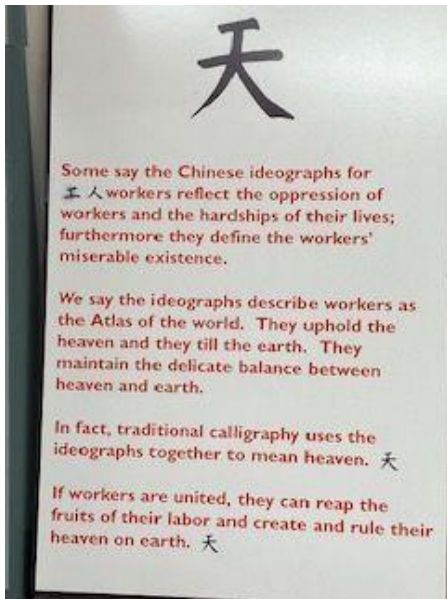
“I demand the CPC to give my money back and to cancel the 24 hours working schedule,” says Zhu Chen about her dreams for the future.



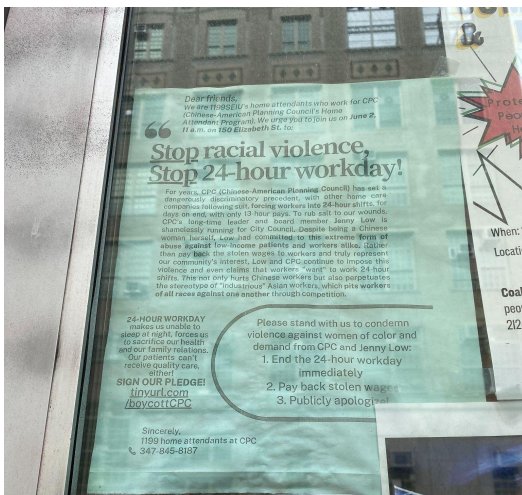
Chen shows me her hands which she says have been damaged from the 24 hour work cycle.



Zhu Chen



Poster from the Chinese Staff and Workers Association



Pictured left: Lai Chen, organizer and home health attendant, 68 years old.

