



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

DECISION

WWW/142919

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**PRELIMINARY RECITALS**

Pursuant to Wis. Stat., §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Racine County Human Services Dept., a W-2 agency, on July 3, 2012. A fact finding review was scheduled and a fact finding decision was issued on July 16, 2012.

Petitioner timely appealed to the department from the fact finding decision on August 6, 2012. See Wis. Stat. §49.152(2)(b), (c). Due to mis-filing by the Division of Hearings and Appeals, the request was not processed until September 5, 2012. The fact finding file was received by the Division on October 8, 2012.

The issue for determination is whether petitioner abandoned her fact finding meeting.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Wisconsin Department of Children and Families  
201 East Washington Avenue, Second Floor  
Madison WI 53703-2866

By: Unknown  
Racine County Human Services Dept.  
1717 Taylor Ave.  
Racine, WI 53403-2497

FACT FINDER: Laura George

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. By a notice dated June 19, 2012, the W-2 agency denied petitioner's application for W-2 benefits. Petitioner requested a fact finding meeting on July 3, 2012.

3. On July 5 the agency sent petitioner a notice for a fact finding meeting to be held on July 16 at 9:00 a.m. The notice included a telephone number to call if there were any issues with attending the meeting.
4. On July 16 petitioner appeared at the agency at 9:45 a.m. She had not called prior to arriving. She initially did not give the desk worker a reason for being late. Later she stated that she was unable to get transportation until it was too late to arrive by 9:00.
5. In a decision dated July 16, 2012, the fact finder dismissed the fact finding request as being abandoned.

## DISCUSSION

W-2 is Wisconsin's public assistance work program, and is outlined at Wis. Stat. §§49.141-.161. It supplanted the prior federal-state cash payment program, Aid to Families with Dependent Children (AFDC), described at Wis. Stat. §49.19.

### **I. STATUS OF FACT FINDING RECORD**

The first task of a departmental reviewer, such as this hearing examiner, is to determine whether the fact finding record is sufficient for review. If it is not sufficient, the examiner may remand the matter back to the fact finder, conduct a new hearing (either in person or telephonically), or otherwise augment the record. See Wis. Stat. §49.152(2)(d). In the instant case, the paper record is adequate for the examiner to make sense of the case, and a supplementary hearing was not necessary. The findings of fact above are based on the fact finder's file and decision.

### **II. STANDARD OF REVIEW**

A threshold analytical question is whether the departmental reviewer is reviewing this matter *de novo* or with some unspecified judicial standard of review. This entire due process function is subject to Wisconsin's administrative procedure act, Chapter 227, Wis. Stats., because this type of case satisfies all four prongs of the contested case hearing right test at Wis. Stat. §227.42(1). The Department has also made a public declaration that the entire review process at Wis. Stat. §49.152 is subject to Ch. 227's requirements in the document, Public Hearing Comment & Agency Response, Rule Number : DWD 12, p. 14:

The Department considers that the proceedings under paragraph DWD 12.22(2)(a) will be subject to the provisions of s. 227.44-.49, Wisconsin Stats. The Department does not want to deny anyone the opportunity for a court hearing; however, it is expected that very few cases will lead to court.

Based on the foregoing, the Division of Hearings and Appeals has concluded that the W-2 process function is subject to Ch. 227 requirements.

Having concluded that Ch. 227 applies to the W-2 process function, the Division also concluded that the departmental reviewer must engage in a *de novo* look at the fact finder's decision. In Reinke v. Personnel board, 53 Wis. 2d 123, 191 N.W.2d 833 (1971), the Wisconsin Supreme Court instructed state agency adjudicators to make *de novo* determinations, relying on the greater weight of the credible evidence, in administrative hearings. The Court specifically rejected the use of a judicial review (e.g., "substantial evidence" test) standard by the state agency, "unless expressly otherwise provided by statute." Id., pp. 134-136. There is no judicial review standard articulated in either the W-2 statute or promulgated rule. The only standard articulation undertaken by the Department is that the examiner's action is "a limited

review of the record and the decision of the fact finder.” *See W-2 Manual*, Chapter 19, § 19.3.0. This is not an articulated judicial review standard, and it is not legally binding on the examiner here.

### **III. WHETHER PETITIONER ABANDONED THE FACT FINDING REQUEST**

Wis. Stat., §49.152 sets the standards for seeking a review of a W-2 agency decision to deny eligibility. §49.152(2)(a) provides that the agency shall deny a petition for review if the person abandons the petition. “Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled review without good cause, as defined by the department by rule.” §49.152(2)(a)2. The Wisconsin Administrative Code, §DCF 101.20(1) defines good cause further. It provides: “No good cause shall exist unless the participant provides timely notification of the good cause reason to the FEP. Good cause for failing to comply with the W-2 participation requirements shall be any of the following circumstances:... (c) Lack of transportation with no reasonable alternative ....”

I think, technically, the fact finder’s conclusion met the letter of the law. Petitioner was not present at the time of the fact finding, and she did not call ahead to say she was having transportation problems. I am sure that petitioner did not help her cause by answering sarcastically, when asked why she was late, that since she had to wait for hours last time she went to the agency, she was making them wait this time.

Nevertheless, sometimes the letter of the law needs to be tempered by common sense. It is obvious that petitioner did not intend to abandon her fact finding. She showed up, albeit late, and explained that she still desired a fact finding. The simple solution, if the agency representative no longer were available, was to reschedule the fact finding. It is standard practice in the Division of Hearings and Appeals to do just that when a person is late for a hearing. This office holds the hearing if the parties are still able to do it, and reschedules if not. This is especially compelling in this instance where petitioner is subject to a six-month ineligibility period because her application was denied for failing to cooperate with job search activities. See Wis. Admin. Code, §DCF 101.09(2)(h). She at least should be given the opportunity to dispute the denial when she obviously did not intend to abandon the fact finding.

### **CONCLUSIONS OF LAW**

Although petitioner appeared late for her fact finding without first notifying the agency of problems getting there, she nevertheless did not abandon her fact finding request.

**NOW, THEREFORE, it is ORDERED**

That the matter be remanded to the agency with instructions to reschedule petitioner’s July 3, 2012 fact finding request and to hold the fact finding meeting in the usual manner.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as “PARTIES IN INTEREST.” Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Wisconsin Statutes § 227.49. A copy of the statutes can found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is 201 E. Washington Avenue, Second Floor, Madison, WI 53703-2866.

The appeal must also be served on the other “PARTIES IN INTEREST” named in this decision. The process for appeals to the circuit court is in Wisconsin Statutes, §§ 227.52 and 227.53.

Given under my hand at the city of  
Madison, Wisconsin, this 10th day of  
October, 2012

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Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals

cc: WKRP Consortium – e-mail  
W-2 – e-mail



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 10, 2012.

Racine County Department of Human Services  
Wisconsin Works (W2)