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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

WWW/143362

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 16, 2012, under Wis. Stat. § 49.152(1), to review a decision by the Wisconsin Works (W-2) in regard to W2, a hearing was held on September 24, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the W@ agency erred in determining a \$679 dollar overpayment to petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Larhonda Wallace

PSI

6550 N. 76<sup>th</sup> Street

Milwaukee, WI 53233

Fact Finder: Maya Robinson

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was receiving fill CSJ payments in April 2011.

3. Petitioner became employed part time at [REDACTED] as of April 28, 2011.
4. The agency did not process the change in employment until May 24, 2011.
5. On June 22, 2011 the agency placed petitioner in a CS3 partial payment status. Petitioner had received full CSJ payments while working from April 28 until the CS3 placement on June 22.
6. The agency later calculated an overpayment of benefits for the months of April 16, 2011 to July 31, 2011 in the amount of \$1,212.
7. Petitioner requested a Department review. The fact-finder conducted a hearing on August 1, 2012 and issued a decision amending the overpayment to be \$679.
8. Petitioner filed a timely appeal to DHA from that Fact-finding Summary and Decision.

### **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 decision, the recording of the hearing, and the fact finder's file.

#### **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. 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, § 19.3.1, available at <http://dcf.wisconsin.gov/w2/manual/default.htm>. This is not an articulated judicial review standard, and it is not legally binding on the examiner here.

### **III. THE PETITIONER WAS OVERPAID .**

There is no dispute that the petitioner began part time employment on April 28, 2011, and continued to be employed throughout the overpayment period. There is also no dispute that she was issued the full CSJ benefits as asserted by the agency in June and July 2011. Finally, there is no dispute that a person employed part-time is not eligible for full CSJ W2 payments. If the agency had known of the petitioner's April 28, 2011 employment, it had the option of reducing her payments.

The petitioner argues that she reported her employment to her W2 agency on April 28, 2011, and the message must not have gotten through, so she should not be responsible for any overpayment after that date. But, the agency is directed to recover all recent overpayments, even if caused by agency error. *Manual*, 10.3.1 – 10.3.3. It does not matter whether she called the agency or not. Even if the change was made later due solely to an agency error, petitioner received more benefits than she was due during June and July. The rules require that a recipient who gets excess benefits to which he/she is not entitled pay them back.

I see no error in the Fact Finder's computation of the overpayment amount per her written decision, and the petitioner has not brought any computational error to my attention in her review request. Thus, the figure arrived at by the Fact Finder shall stand.

### **CONCLUSIONS OF LAW**

The Fact Finder correctly determined that the petitioner was overpaid \$679 in the months of June and July 2011 for activity from April 28, 2011 until June 22, 2011 when the CS3 placement was effected.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be 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 with the appropriate court 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. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of September, 2012

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John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals

c: Wisconsin Works (W -2) - email



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

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The preceding decision was sent to the following parties on September 25, 2012.

Wisconsin Works (W-2)