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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

WWW/144899

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 03, 2012, under Wis. Stat. § 49.152(1), petitioner filed a request for a W-2 Fact Finding review with Policy Studies, Inc. (PSI), a Wisconsin Works (W-2) agency in Milwaukee, Wisconsin. A Fact-Finding review was held by PSI on September 12, 2012. PSI issued a Fact-Finding decision entitled "Fact Finding Summary and Decision," dated September 19, 2012.

The issue for determination is whether the W-2 agency correctly reduced the petitioner's W-2 payment for September, 2012.

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  
Madison, Wisconsin 53703

**FACT FINDER:**

Thomas Prete  
Policy Studies, Inc.  
6650 N. 76<sup>th</sup> Street  
Milwaukee, WI 53223

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and a Community Service Jobs (CSJ) participant.
2. Petitioner attended an Employability Plan update appointment with respondent on June 15, 2012. Petitioner claimed good cause for failing to complete previously assigned W-2 activities due to lack of child care. Good cause was not granted, as petitioner had been previously instructed to open her child care case. Petitioner was instructed to open her child care case.
3. Petitioner did not seek to open her child care case until August 16, 2012.
4. At the Employability Plan update appointment of June 15, 2012, petitioner was assigned 28 hours of employment search from June 15-June 22; 2 hours of Job Club from June 15-June 22; 15 hours for Echoes workshop from 6/25-July 6, 13 hours of employment search from June 25 – July 6; and 30 hours of employment search from July 9 – September 3.
5. Petitioner did not attend of the activities assigned in paragraph 4, above.
6. On July 16, 2012, petitioner met with respondent and claimed good cause for her failure to open her child care case and her failure to complete any activities for the period of July 16 – August 15. As proof of good cause, petitioner claimed that she'd had car troubles, her child had fallen down stairs, and that she had received an eviction notice from her landlord. Good cause was denied because, at the time of the Fact Finding hearing, petitioner did not have an open child care case, and because bus passes had been offered in light of petitioner's car troubles, but petitioner declined the assistance.
7. Petitioner testified at the Fact Finding hearing that she had an aunt who assisted with her transportation, and that was why she declined the assistance. When the aunt was unable to help, petitioner requested a bus pass, but she stated that she was denied on August 30, 2012.
8. On August 20, 2012, a W-2 Payment Reduction Notification letter was mailed to petitioner seeking good cause verification. Ms. [REDACTED] timely submitted good cause verification documents on August 29, 2012. Respondent accepted certain documents and granted good cause, while it rejected others for failing to establish good cause. One grant of good cause resulted in the issuance of a \$20 auxilliary payment. Three grants of good cause applied to the following pay period, however.

### 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 and electronic hearing 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*, §12.3.1, 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. Whether the W-2 agency correctly determined that the petitioner's W-2 payment be reduced for August 2012, due to lack of good cause for failing to complete her W-2 activities.

CSJ participant must participate in all assigned work training activities or education and training activities outlined in the Employability Plan. Payments for CSJ participants who fail to participate in assigned activities are reduced by \$5.00 per hour for hours missed without good cause. *W-2 Manual*, §11.1.1, available online at <http://dcf.wisconsin.gov/w2/manual/default.htm> . "Good Cause" includes circumstances beyond the control of the petitioner. Wis. Adm. Code, §DWD 101.20(1)(o).

The *W-2 Manual* provides the following good cause reasons for failing to comply with the W-2 assigned activities:

1. Any required court appearance including a required court appearance for a victim of domestic abuse.
2. Inability to obtain child care that is necessary for the W-2 participant to participate or accept employment, but is unavailable and the W-2 agency was unable to provide or refer for alternate child care arrangements.
3. Lack of transportation with no reasonable alternative, as determined by the FEP. In determining the reasonableness of transportation alternatives, FEPs should consider factors such as the length of commute, participant safety and cost of transportation in relationship to income.
4. Participant or W-2 Group member's illness, injury or disability or incapacity. It is expected that a participant will need to remain home occasionally to care for an ill child who has to miss school or daycare or a participant will need to miss an assigned activity due to an unexpected illness or a documented chronic illness, *e.g.*, chronic asthma, panic attacks, disabled child, child with behavioral problems, etc.
5. Accommodations identified in a formal assessment but the accommodations are not available to complete the assigned activity.

6. Conflict with another assigned W-2 activity or job search attempts.
7. Inclement weather that impedes transportation or travel.
8. School emergency.
9. Domestic violence issues as defined in Wisconsin Administrative Rule DCF 101.15(3).
10. Death in immediate family. (See 11.2.2.2)
11. Observance of a religious holiday.
12. Routine medical or school appointments, which cannot be scheduled at times other than during assigned activities.
13. Child's school holiday with the exception of summer break.
14. Any day that the worksite or training site is closed due to a site-specific holiday, e.g., days closed surrounding Christmas, closure the day after Thanksgiving, etc.
15. Other circumstances beyond the control of the participant, but only as determined by the FEP.

*W-2 Manual* §11.2.2.

Petitioner submitted documentation regarding some of her good cause claims. While certain of those good cause assertions were accepted, the respondent rejected the circumstances of petitioner's eviction. Notably, three of the five good cause documents were accepted, but applied to the following pay period. I do not find any error on this point. Of the remaining two documents, one was accepted and an auxiliary payment was issued, while the eviction-related good cause claim was rejected for failure to demonstrate how the eviction process prevented petitioner from engaging in her assigned W-2 activities.

**a. Eviction**

Petitioner claimed that the eviction required her to expend a good deal of time searching for new living quarters that would accept rent assistance. The fact-finder determined that it was unreasonable to expect the search for new housing to fill entire days of working hours for months, and I concur. While the search may have been difficult and time-consuming, it stretches credulity to discern how that search could occupy so many hours over so many weeks. The petitioner failed to establish that the agency erred in rejecting the eviction matter as good cause for failure to complete assigned activities.

**b. Child Care**

The petitioner's claim of good cause based upon her lack of child care was similarly rejected, as petitioner had been requested to open a child care case several months earlier (May, 2012), and did not comply until her August 16, 2012 request for child care was opened on August 22, 2012. The fact-finder noted that W-2 policy allows good cause for lack of child care, but only if the participant can demonstrate the unavailability of child care. The agency denied good cause for this issue as she had been referred to apply for child care in May, 2012. The *W-2 Manual* states the following:

An inability to obtain child care must be based on the following reasons:

1. Formal child care is not available within a reasonable distance from the parent's home or work site. Formal child care is considered available if there is at least one licensed or certified child care facility with space available for the child. The certified or licensed child care facility, including a W-2 agency with certified or licensed on-site child care, must not be considered available if there is documentation that the facility would be harmful to the health or safety of the child. Reasonable distance means no more than 60

minutes travel time one-way, using available transportation, from the parent's home to the child care provider's location to the parent's work site. Travel time may be extended up to 90 minutes one-way if there is a good placement opportunity for the participant AND the participant is willing to enter into this arrangement.

and,

2. Informal child care by a relative or under other arrangements is unavailable or unsuitable. Informal child care is defined as an arrangement in which the child care provider is neither licensed nor certified. (See Child Care Policy Manual, Chapter 1) Informal child care arrangements may be used by any W-2 participant; however, a participant cannot be required to use informal child care.

If the participant fails to demonstrate an inability to obtain child care, he or she may face payment reductions for non-participation.

An inability to obtain appropriate child care may be indicative of a shortage of child care providers in the community (including sick child care, evening and weekend care, culturally competent child care, and care for disabled children) and W-2 agency management should be alerted to the problem. Each W-2 Community Steering Committee is responsible for working with participants, employers, child care providers and the community to identify child care needs, improve access to child care and expand availability of child care.

*W-2 Manual*, §11.2.2.1.2 (emphasis added). Here the agency determined that petitioner failed to demonstrate an inability to obtain child care under this policy and denied good cause. Based on the record before me, I agree.

Petitioner has presented no substantiated rationale for her failure to open her child care case between May, 2012 and August 26, 2012. Testimony regarding her child falling down stairs, transportation issues, and the eviction fail to provide grounds for the delay in opening petitioner's child care case. She was made aware of the need to open her child care case in May, and re-instructed to do so in June and July. Based on the testimony and evidence concerning this issue, I am unable to conclude that the petitioner has demonstrated an error on the part of the respondent in rejecting petitioner's lack of child care as good cause for failure to participate in assigned activities.

### **c. Lack of Transportation**

Lack of transportation with no reasonable alternative is considered "good cause." *W-2 Manual* §11.2.2. In determining the reasonableness of transportation alternatives, the manual directs respondent to consider factors such as the length of commute, participant safety and cost of transportation in relationship to income.

The fact-finder concluded that petitioner had failed to timely bring her transportation issues to the attention of the respondent, and furthermore petitioner had been offered bus passes, but declined them. The petitioner has testified that the declination was based upon her anticipation of receiving transportation from a relative, but I find this argument to be ancillary and not necessarily vital to the main issue of whether or not respondent erred in denying good cause here. I note that petitioner did not request bus passes until August 29, 2012, after the participation period at issue. While she first noted this problem in July, it appears that it was not an issue then, since she could rely on a relative for transportation. At some point, the relative was no longer a viable transportation option, and assistance was requested. Petitioner has not established that her transportation issues constituted good cause of non-participation during the participation period or prior to August 29, 2012.

**d. Conflicting Scheduled Appointments**

Petitioner presented verifications of certain appointments in support of her good cause argument. The respondent granted good cause for those appointments verified, but the fact-finder noted that only one appointment date (August 10, 2012) occurred during the participation period at issue here. As noted in the Findings of Fact, above, petitioner was issued an auxiliary payment for that appointment. As the remaining verifications did not apply to the participation period at issue here, I concur with the fact-finder in determining that the respondent did not err in allowing good cause for the appointments verified by petitioner. Petitioner has not demonstrated that respondent improperly processed and/or applied credit for these conflicting appointments.

The evidence before me does not establish good cause or a circumstance beyond a person's control that would otherwise excuse petitioner's failure to participate in her assigned activities. The agency has met its burden, and the respondent's reduction of payment for August, 2012 must be affirmed under these facts.

**CONCLUSION OF LAW**

The W-2 agency correctly determined that the petitioner's W -2 payment be reduced for August 2012.

**THEREFORE, it is ORDERED**

That the petition for review herein 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 served and 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, Madison, Wisconsin 53703. 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 7th day of December, 2012

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on December 7, 2012.

Wisconsin Works (W-2)