[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

WWW/143863

PRELIMINARY RECITALS

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Winnebago County, a W-2 agency, on August 17, 2012. A fact finding review was held and a fact finding decision was issued on August 31, 2012.

Petitioner timely appealed to the department from the fact finding decision on September 13, 2012. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on September 17, 2012, with no recording.

The issue for determination is whether the agency correctly reduced/sanctioned the petitioner's W2 payments for August and September, 2012.

At Fact Finding, there appeared at the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Wisconsin Department of Children and Families
201 East Washington Avenue, Second Floor
Madison WI 53703-2866
By: Jennifer Marks, W2 worker
Winnebago County Department Of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

FACT FINDER: Ms. D. Blankenship
...

ADMINISTRATIVE LAW JUDGE: Nancy Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Winnebago County.

2. As of June 1, 2012, the petitioner was participating in the W2 program at the Community Service Job (CSJ) level. At a June 25, 2012, appointment with her W2 worker, a new assessment was completed. The petitioner was subject to an Employability Plan that required her to perform 12 hours of flexible Employment Search (verified by logs to be submitted by the participant) plus part-time Job Readiness activities on a weekly basis. The petitioner indicated that she needed to care for her 10-year old son due to his disability, so a request for verification of his disability and need for child care was issued to her. As of that date, the child was attending school. The W2 worker spoke to the child's principal on June 26; he declined to sign off on *Need to Care for Disabled Family Member* form for the petitioner's child, and noted that the child came and went from school independently. However, the child was then kicked out of school for an unspecified amount of time due to an incident on June 26.

3. The petitioner did not perform ES and did not submit ES logs for June and July 2012.

4. On July 5, 2012, a *W2 Payment Reduction Letter* was issued to the petitioner, advising her to submit proof of good cause to her worker by July 16, 2012. Nothing was received by that date. The worker issued numerous subsequent reminder letters regarding good cause to the petitioner, in addition to the notices described below.

5. On July 6, 2012, a *Wisconsin Works Payment Statement* as issued to the petitioner, advising that her August W2 payment (for the month ending 7-15-12) would be reduced from the $628 maximum to $371.00. The notification advised her to submit any good cause document "right away."

6. On July 17, 2012, the petitioner and the worker met to discuss her nonparticipation and potential good cause for caring for a disabled family member. A new *Need to Care for Disabled Family Member* form was given to the petitioner. On July 27, 2012, they met again to discuss possible good cause for caring for a disabled family member.

7. On July 27, 2012, a *W2 Payment Reduction Letter* was issued to the petitioner, advising her to submit proof of good cause to her worker by August 7, 2012. On August 18, 2012, the agency issued a *Wisconsin Works Payment Statement* to the petitioner, advising of a reduction to her September payment ($34.00).

8. On August 2, 2012, the petitioner requested that her W2 case be closed. On August 2, she turned in a document that established that her son is eligible for SSI, and has been considered disabled since April 2007.

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 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. Thus, a *de novo* standard will be used here.

III. PAYMENT REDUCTIONS.

When a W2 participant fails to perform the W2 activities listed in her EP, the agency is to reduce the W2 monthly payment accordingly. *W2 Manual*, §11.1.1, online at http://dcf.wisconsin.gov/w2/manual/default.htm . See also, in accord, Wis. Admin. Code §DCF 101.18. Where the assigned activity is ES, performance of the activity is verified by client submission of ES logs. The petitioner submitted no ES logs for June or July, despite repeated admonitions to do so. The petitioner asserted that she could not perform ES because of her need to care for her disabled 10-year-old. I believe she did not perform the ES. Thus, sanction of her ensuing payments was appropriate unless the participant established good cause for her nonparticipation. *Id.*, § 11.1.1.

Good cause is described in policy as follows:

> The good cause reasons for failing to comply with the W-2 assigned activities are:
>
> > Any required court appearance including a required court appearance for a victim of domestic abuse.
> >
> > 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.
> >
> > Lack of transportation with no reasonable alternative, ...
> >
> > 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.

Accommodations identified in a formal assessment but the accommodations are not available to complete the assigned activity.

Conflict with another assigned W-2 activity or job search attempts.

Inclement weather that impedes transportation or travel.

School emergency.

Domestic violence issues as defined in Wisconsin Administrative Rule DCF 101.15(3).

Death in immediate family. (See 11.2.2.2)

Observance of a religious holiday.

Routine medical or school appointments, which cannot be scheduled at times other than during assigned activities.

Child's school holiday with the exception of summer break.

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.

Other circumstances beyond the control of the participant, but only as determined by the FEP.

[*emphasis added*]

W2 Manual, §11.2.2. See also, §DCF 101.20.

The petitioner's good cause excuse she was needed at home to care for her disabled child. Where the need to care for a disabled family member causes the participant to miss more than three consecutive working days of W2 activity, the good cause factor must be verified. *Id*., § 11.2.4.1; Wis. Admin. Code § DCF 101.20(3). The petitioner did not verify that her son was disabled until she left the W2 program. Because the child has apparently been disabled since 2007, it is not clear to me why there was a delay in getting proof of his SSI eligibility to the agency promptly – his disability was not a new discovery to his mother. Also the petitioner never verified (one rejection required) that she was unable to obtain daycare for the child. Therefore, there was no good reason for the nonparticipation, and the payment sanctions were appropriate. The agency appropriately considered the due diligence policy requirements found at *W2 Manual*, §11.3.

CONCLUSIONS OF LAW

1. The W2 agency correctly reduced the petitioner's A ugust and September, 2012, payments as a sanction for nonparticipation from June 15, 2012, - August 2, 2012.

2. The petitioner did not have good cause for her nonparticipation.

NOW, THEREFORE, it is **ORDERED**

That the petition is dismissed.

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 served and 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 ,
Wisconsin, this22nd day of February,
2013

\s
Administrative Law Judge
Division of Hearings and Appeals
/

cc:

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 22, 2013.

Winnebago County Department of Human Services
Wisconsin Works (W2)