



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

In the Matter of

[REDACTED]

DECISION

WWW/145481

PRELIMINARY RECITALS

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Workforce Connections, a W-2 agency, on October 11, 2012. A fact finding review was held and a fact finding decision was issued on October 25, 2012.

Petitioner timely appealed to the department from the fact finding decision on November 23, 2012. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on January 11, 2013.

The issue for determination is whether the W-2 agency erred in reducing petitioner's October 12, 2012 W-2 check by 50 hours for the period from 8/16/12 to 9/15/12.

There appeared at that time and place 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:

Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

FACT FINDER: Lisa Burnham

ADMINISTRATIVE LAW JUDGE:

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.

2. Petitioner was a recipient of W-2 benefits in late 2012.
3. Petitioner met with his W-2 agency worker on August 14, 2012. They set a plan including 10 hours of employment search, 19 hours of personal care, and a monthly meeting together. A Record of Activity (ROA) and verifications was due from petitioner to his worker on August 31.
4. Petitioner did not turn in the ROA by the deadline.
5. Petitioner and his worker met on September 5, 2012. Petitioner provided various excuses as to why he had not turned in the ROA and verifications.
6. Petitioner's next ROA and verifications were due on September 21, 2012. Petitioner's worker told petitioner this at the end of the meeting.
7. On September 17th, the worker sent petitioner a notice that his W-2 would be reduced by 20% unless petitioner provided good cause for why the ROA and verifications were not being provided. The worker also informed petitioner that he would require the ROA and verifications on September 26th.
8. Petitioner then provided an ROA on September 17th for the period from August 14 to September 16. But, the ROA did not include any verification of the claimed activities.
9. On October 5, 2012, petitioner ultimately provided the verification for the period from August 14 to September 16.
10. Petitioner's October 12, 2012 check was reduced by 50 hours.

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 tape 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:

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.

In this case, the W-2 agency reduced the payments to petitioner because it claimed that he did not provide requested verification of activities or medical good cause exceptions for missing activities. The agency representative testified that the verification was requested from petitioner repeatedly. The agency was aware of medical issues with petitioner, but simply argued that the verification was not provided.

Petitioner did not rebut this claim. Petitioner provided various inadequate excuses such as that his computer's anti-virus software was out of date and he was reluctant to go online, and that the computers at his local library are not user-friendly.

Petitioner did not provide the required verification until two weeks after he was informed of the cut to his benefits. By the time he provided the verification, the reduction had been placed in effect and his October 12 check was already being processed at the reduced amount.

The agency committed no error here. The events were caused by petitioner's failure to meet the requests of the program. Such an inattentive and carefree approach caused the reduction of hours.

CONCLUSIONS OF LAW

The W-2 agency did not err by reducing petitioner's W -2 payments because the activity logs were not provided by the due date.

NOW, THEREFORE, it is ORDERED

That this appeal 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, this 11th day of January,
2013

vs John P. Tedesco
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 January 11, 2013 .

Vernon County Human Services
Wisconsin Works (W2)