



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

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In the Matter of

[REDACTED]

DECISION

WWW/145867

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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 Dane W-2 agency, a W-2 agency, on or about November 22, 2012. A fact finding review was held and a fact finding decision was issued on December 6, 2012.

Petitioner timely appealed to the department from the fact finding decision on December 10, 2012. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on January 16, 2013.

The issue for determination is whether the W-2 agency correctly denied the petitioners' request for a further Wisconsin Works (W-2) extension to the 60-month lifetime eligibility time limit as of January 1, 2013 because she did not meet the required legal criteria for approval.

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: Gwen Hannes, EPS Supervisor  
Dane County Department Of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

FACT FINDER: Roxana Vega

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who has participated in W-2 since 2007 in the Community Services Jobs (CSJ) category.
2. The petitioner has participated in W-2 for more than 60 months, and has met the 60 month eligibility time clock limit for W-2 participation.
3. The W-2 agency sent a May 25, 2012 notice to the petitioner which stated that W-2 eligibility for cash assistance is limited to a lifetime limit of 60 months, but placement in each W-2 employment position is limited to 24 months unless an extension is approved. That notice indicated that the W-2 agency granted for the petitioner an extension for 6 months from May, 2012 through October, 2012.
4. The W-2 agency sent a July 2, 2012 W-2 60 Month Time Limit Alert Notice to the petitioner stating that her CSJ placement has used 54 of the total 60 month time limit for W-2 benefits.
5. On August 6, 2012, the W-2 agency had a meeting with the petitioner to evaluate her W-2 lifetime extension.
6. The W-2 agency sent an August 13, 2012 notice to the petitioner confirming that petitioner needed to complete her W-2 review by October 1, 2012.
7. A second extension meeting with petitioner was held during September, 2012 to again evaluate the life time extension.
8. The W-2 agency sent a September 18, 2012 notice to the petitioner stating her W-2 eligibility would discontinue effective October 1, 2012.
9. The W-2 agency sent an October 3, 2012 notice to the petitioner stating that her 60 Month Time Limit Lifetime Extension request was denied as of December 31, 2012. That notice further stated that W-2 is a time-limited program, and that W-2 cash assistance is limited to 6- months unless an extension is approved. The W-2 program has determined that petitioner does not qualify for any further W-2 extension.
10. The basis for the extension denial was that petitioner had access to full time hours during September, 2012 through her work at [REDACTED] but petitioner was not making all the necessary efforts to find and accept that full time employment.
11. The petitioner wanted to spend time with her children (as a single parent) outside of school hours, and thus did not want to work during non-school hours preventing her from full-time employment.
12. The petitioner is not disabled.
13. The petitioner has not submitted to the W-2 agency any Medical Examination or Incapacity form, and has not established any physical or mental capacity limitations regarding employment.
14. The petitioner not established with medical documentation that she needed to remain at home to care for any of her children.
15. The W-2 Agency determined that the petitioner's supporting documentation for a further W-2 extension could not be approved because petitioner did not establish any "unusual circumstances" that she met any of the criteria for approval of a further extension.
16. On December 6, 2012, the W-2 fact finder issued a written Fact Finding Decision affirming the W-2 agency's denial of the petitioner's W-2 extension because the participant does not meet any of the criteria that would allow the W-2 agency to grant a further extension to the 60 month time limit because the participant could obtain more hours of employment but has chosen not to accept

those hours and does not meet any extension approval criteria pursuant to the W-2 Manual, 2.10.6.2.

17. The petitioner filed a request for a second level review with the Division of Hearings & Appeals, and the fact finding review file was received at DHA on January 16, 2013.

### DISCUSSION

W-2 is Wisconsin's public assistance work program, and is outlined at WI Stat §§ 49.141 - .161. The petitioner disagrees with the W-2 Agency's fact finding decision affirming the Agency's denial of an extension of W-2 eligibility for her. The first task of a departmental reviewer, such as this Administrative Law Judge (ALJ), is to determine whether the fact finding record is sufficient for second level review. If it is not sufficient, the judge may remand the matter back to the fact finder, conduct a new hearing, or otherwise augment the record. See, WI Stat § 49.152(2)(d). In the instant case, the record is adequate (with the CD of the fact finding hearing) for the administrative law judge to make sense of the case with respect to the W-2 Agency denial of an extension, and the fact finder's decision to sustain that denial. This ALJ listened to the entire CD of the petitioner's Fact Finding on November 29, 2012. I turn now to the merits of the dispute.

**W-2 is a time-limited program, with a 60-month lifetime W-2 payment limit. See, WI Stat § 49.145(2)(n); WI Admin Code, § DWD 12.09(2)(n); W-2 Manual, §2.3.0.** Subsidized employment positions, including Community Services Jobs (CSJ) and W-2 Transitional (W-2T) positions are limited to 24 months. WI Admin Code, §§ DWD 12.16(3)(e) and (4)(c); W-2 Manual, §2.3.2.

WI Stat § 49.145(2)(n)3 and WI Admin Code, § 12.09(2)(n) provide that an extension to the overall 60-month lifetime limit can be approved on a case-by-case basis, for "unusual circumstances" that "warrant an extension". The statute does not elaborate further.

The Code provision does. The Department's rule provides that "**unusual circumstances**" means any of the following:

1. A W-2 participant is unable to work because of personal disability or incapacitation, or is needed as determined by the agency to remain at home to care for a member of the W-2 group whose incapacity is so severe that without in-home care provided by the W-2 participant, the incapacitated W-2 group member's health and well-being would be significantly affected.
2. A W-2 participant has significant limitations to employment such as any of the following:
  - a. Low achievement ability, learning disability or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for supplemental security income under 42 USC 1381 to 1383c or social security disability insurance under 42 USC 401 to 433.
  - b. Family problems of such severity that they prevent the W-2 participant from obtaining or retaining unsubsidized employment.
3. The W-2 participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this subdivision, "reasonable job opportunity" means a job that pays minimum wage, and conforms to all applicable federal and state laws.

WI Admin Code §§ DWD 12.09(2)(n)1-3.

However, the W-2 Manual, §2.3.5.1, specifies that an extension to the overall 60-month limit may be granted only if the person has participated in assigned activities *and* has significant barriers to advancement. The Manual also references that the W-2 Agency must have written documentation from an appropriate medical, professional, DVR, assessing agency or business to establish incapacities. The policy language, in effect, “blends” some of the rule provisions found in subsections 2 & 3 of WI Admin Code § DWD 12.09(2)(n) to fashion a restatement of the standard.

In the instant case, the hearing record is clear that the petitioner has failed to establish with any reliable documentation that she meets any of the above bases for establishing “**unusual circumstances.**” This ALJ listened to the entire CD of the petitioner’s November 29, 2012 Fact Finding. During that Fact Finding, the W-2 agency representative testified in detail that petitioner did not meet any of the above approval criteria for further extension beyond the 60 month time limit. The petitioner contested that it was not fair that her extension was not granted. However, her testimony was vague, disorganized, and was mostly her recitation of the many problems she and her children encountered. Her testimony was without any focus, and most of her testimony was not relevant to the issue at hand. While the petitioner was upset that her further extension was denied, she was unable to present any specific reason as to why that denial by the W-2 agency was incorrect.

Petitioner referred to some past barriers and past domestic abuse, but was unable to provide any reliable testimony or evidence that any of those issues remained currently relevant to the denial of her further W-2 Extension as of January 1, 2013. Furthermore, the fact finding record appears clear that the petitioner does not meet the requirements of the Department’s rule requiring the W -2 recipient to establish “unusual circumstances” for a W-2 extension pursuant to the WI Admin Code §§ DWD 12.09(2)(n)1-3. While petitioner alleged that she was willing to work full-time with more clients, such testimony was not convincing. It appears that the petitioner did not want to accept or pursue full-time employment because she wanted to be available for her children during non-school hours. Accordingly, for the above reasons, I conclude that the W-2 fact finder correctly sustained the W-2 agency’s action to deny the petitioner’s request for a further Wisconsin Works (W-2) extension to the 60-month eligibility time clock as of January 1, 2013.

### **CONCLUSIONS OF LAW**

The W-2 fact finder correctly sustained the W-2 agency’s action to deny the petitioner’s request for a further Wisconsin Works (W-2) extension to the 60-month eligibility time clock as of January 1, 2013.

**NOW, THEREFORE, it is** **ORDERED**

The petition for review herein be and the same is hereby 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 20th day of February,  
2013

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Gary M. Wolkstein  
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 20, 2013 .

Dane County Department of Human Services  
Wisconsin Works (W2)