



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WWW/151616

PRELIMINARY RECITALS

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Maximus, a W-2 agency, on July 5, 2013. A fact finding review was held and a fact finding decision was issued on July 25, 2013.

Petitioner timely appealed to the department from the fact finding decision on August 22, 2013. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on September 27, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of W-2 payments in the amount of \$1,315 for the period of March 1, 2013 – June 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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

By:

Wisconsin Works (W-2)
Maximus

FACT FINDER: Maya [REDACTED]

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On March 14, 2013, the Petitioner commenced employment with [REDACTED] 40 hours/week at \$9.50/hour.
3. On April 9, 2013, the Petitioner's wife reported his employment with the agency.
4. On April 12, 2013, the agency received an employment verification from [REDACTED] for the Petitioner.
5. On May 10, 2013, the Petitioner submitted pay statements to the agency. The agency updated the Petitioner's case with his employment on May 10, 2013.
6. The agency issued W-2 payments to the Petitioner as follows:

March 29, 2013	\$116.00
March 29, 2013	\$ 93.00
April 30, 2013	\$653.00
May 31, 2013	\$522.00

For the period of February 16, 2013 – March 15, 2013, the Petitioner was in placement on 3 days and was entitled to a prorated payment of \$69. For that period, he received actual payments of \$209.

7. On June 27, 2013, the agency issued an overpayment notification and worksheets to the Petitioner informing the Petitioner that the agency intends to recover an overissuance of W-2 benefits in the amount of \$1,198 for the period of March 14, 2012 – May 9, 2013.
8. On July 25, 2013, the Fact Finder issued a decision finding the agency must recover an overissuance of W-2 benefits in the amount of \$1,315. The Fact Finder determined that the Petitioner was entitled to \$69 in benefits for the period preceding his employment. Therefore, on March 29, 2013, the Fact Finder determined the Petitioner was overissued benefits in the amount of \$140 (\$209 – \$69). The Fact Finder further determined that Petitioner was not entitled to any benefits after he commenced employment and was overissued benefits in the amount of \$653 on April 30, 2013 and \$522 on May 31, 2013. Therefore, the Fact Finder issued a decision finding the agency could recoup \$1,315 in W-2 benefits that were overissued to the Petitioner (\$140 + \$653 + \$522).

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.

There is no dispute that the Petitioner began full time employment on March 14, 2013, and continued to be employed throughout the overpayment period. There is also no dispute that he was issued the CSJ benefits as asserted by the agency during the period. Finally, there is no dispute that a person employed full-time is not eligible for CSJ W2 payments. If the agency had known of the petitioner's March 14 employment, it had the option of terminating benefits effective March 14, 2013. *Manual*, §10.2.4.

The Petitioner argues that he reported his employment to the W2 agency worker on April 9, 2013, so he should not be responsible for any overpayment after that date. First, I note that even an April 9 report date would have been late. He was required to report the change within 10 days. Wis. Admin. Code §DCF 101.09(2)(m) (December, 2010). Further the agency is directed to recover all recent overpayments, even if caused by agency error. *Manual*, 10.3.1 – 10.3.3. Like the Fact Finder and Petitioner, I question why the Petitioner's case was not updated until May 10, 2013 but, regardless, the Petitioner received W-2 benefits to which he was not entitled and the agency is required to recover those benefits even if agency error created the overpayment.

The Petitioner's appeal did not identify any particular perceived flaw in the Fact Finder's decision. He simply believes he should not be responsible for the overpayment because it was caused, at least in part, by the agency's failure to update his case. Again, regardless of any agency error, the agency is required to recover any overissuance of benefits.

I see no error in the Fact Finder's computation of the overpayment amount per her decision, and the Petitioner has not brought any computational error to my attention in the 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 \$1,315 in W-2 benefits for the period of March 1, 2013 through June 1, 2013.

NOW, THEREFORE, it is **ORDERED**

That the petition be, and hereby 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 31st day of October,
2013

\s Debra Bursinger
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 October 31, 2013.

Wisconsin Works (W-2)