



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

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In the Matter of

██████████ ██████████  
██████████  
████████████████████

DECISION

WWW/153083

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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 the YWCA, a W-2 agency, on September 25, 2013. A fact finding review was held and a fact finding decision was issued on October 7, 2013.

Petitioner timely appealed to the department from the fact finding decision on October 25, 2013. See Wis. Stat., §49.152(2)(b), (c). The fact finding file was received by the Division on December 2, 2013.

The issue for determination is whether the W-2 agency correctly imposed hourly sanctions.

**PARTIES IN INTEREST:**

Petitioner:

██████████ ██████████  
██████████  
████████████████████

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

By: Iesha Walls  
YWCA  
1915 N. Martin Luther King Dr.  
Milwaukee, WI 53212

**FACT FINDER:** Maya Robinson

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ██████████) is a resident of Milwaukee County.
2. Petitioner is a W-2 recipient. During the period July 16 through August 15, 2013, her Employability Plan (EP) required her to do work experience and job search activities.

3. On August 30 and September 16, 2013 the agency notified petitioner that it intended to reduce her W-2 payments due to missed activities. Petitioner provided a doctor's statement, and the agency reversed the sanction for work experience for good cause. It did not reverse the sanction for job search because the doctor's limitations would not have applied to job search.
4. Petitioner utilized child care throughout the period in question.
5. Petitioner requested a fact finding on the sanction. The fact finder upheld the sanctions (with exception of the medical good cause agreed by the agency), noting that petitioner had not shown good cause for missing the remaining 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 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.

### **III. THE HOURLY SANCTIONS**

Under W-2 rules a recipient is entitled to a monthly payment for doing work activities defined in her Employability Plan. Wis. Admin. Code, §DCF 101.18(1). Failure to complete the activities without good cause can result in the monthly payment being reduced by the number of missed hours times \$5.00. Admin. Code, §DCF 101.18(1)(b) and (c); W-2 Manual, §11.1.1. Good cause essentially is a barrier to completing the activities resulting from circumstances beyond the person’s control. Admin. Code, §DCF 101.20(1), Manual, §11.2.2. It is the recipient’s duty to notify the agency of good cause within seven days of missing an activity. Admin. Code, §DCF 101.20(2); Manual, §11.2.1.

In this case it is undisputed that petitioner missed the hours in question. During the hearing she raised a number of good cause reasons, including health problems, lack of transportation, mail difficulties, and housing issues. Petitioner missed 46 hours of work experience and 72 hours of employment search during the period July 16 through August 15, 2013. She did not notify the agency of any good cause until after she received the sanction notice, at which time she claimed medical issues, but those issues arose after August 15. During the period August 16 to September 15 petitioner missed 44 hours of work experience. The agency granted her good cause for part of the time because her doctor verified a medical excuse.

In all other instance petitioner has not shown good cause for her missed activities. I note that the fact finder considered petitioner’s claims thoroughly and wrote a well-reasoned decision to uphold the sanctioned hours. The fact finder noted that the transportation problems were caused by petitioner giving her bus passes to her boyfriend, and the mail problems resulted from petitioner’s mother not getting the mail to petitioner even though petitioner’s mother’s address was the correct mailing address. In her appeal letter petitioner did not point to any errors. I conclude, therefore, that the fact finding decision should be upheld.

### **CONCLUSIONS OF LAW**

The W-2 agency correctly imposed W-2 hourly sanctions on petitioner due to missed EP activities.

**NOW, THEREFORE, it is ORDERED**

That 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 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 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  
Madison, Wisconsin, this 3rd day of  
December, 2013

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Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 3, 2013.

Wisconsin Works (W-2)