



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
██
██

DECISION

WWW/155363

PRELIMINARY RECITALS

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Milwaukee YWCA, a W-2 agency, on February 12, 2014. A fact finding review was held on January 22, 2014, and a fact finding decision was issued on or about January 29, 2014.

Petitioner timely appealed to the department from the fact finding decision on February 7, 2014. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on March 18, 2014.

The issue for determination is whether the W-2 agency correctly denied the petitioner's request for a further Wisconsin Works (W-2) extension to the 60-month eligibility time clock as of April 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

By: Wisconsin Works YWCA agency
1915 N. Martin Luther King Jr. Drive
Milwaukee, WI 53218

FEP Workers: ██████████ ██████████ and ██████████ ██████████

FACT FINDER: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 53 years old resident of Milwaukee County who participated in W-2 for more than 60 months, and has met the 60 month eligibility time clock limit for W-2 participation.
2. The petitioner has a high school diploma and has a reasonable amount of work experience in the past.
3. Petitioner has used 50 months as a CSJ 24 month clock participant, 4 months at the W-2T status, 13 months as non-24 month participation, and 8 months of TANF months for a total of 75 months of her 60 month overall lifetime limit for W-2. Her FEP was [REDACTED].
4. The petitioner was granted a six month W-2 extension until March 31, 2014.
5. On September 3, 2013, petitioner alleged to her prior FEP worker, [REDACTED], that she was pregnant and her due date for a high risk pregnancy was during September, 2013.
6. The W-2 agency requested medical verification from the petitioner that she was pregnant. The petitioner failed without any established good cause to provide any medical verification of her pregnancy even as of the date of her January 22, 2014 Fact Finding.
7. On December 30, 2013, petitioner met with her newly assigned FEP, [REDACTED].
8. On January 2, 2014, the W-2 agency received a Medical Examination and Capacity form and letter from petitioner's physician, [REDACTED], DO, stating that petitioner had limitations for six weeks regarding her prolonged standing or walking more than 1000 feet, but with those limitations could return to work-related activities. Dr. [REDACTED] indicated that petitioner had left foot pain due to her osteoarthritis. The petitioner was released for work, work experience education, job readiness, life skills, job skills training and supported job search activities with no limits, but with 5 -10 minutes breaks every two hours. Dr. [REDACTED] did diagnose the mental health problem of "Somatoform Disorder" (which are various mental illnesses that cause bodily symptoms including pain, that can't be traced back to any physical cause).
9. On January 10, 2014, FEP [REDACTED] met with petitioner regarding her request for a further W-2 extension. Petitioner did not submit any verification of her pregnancy. The petitioner refused to participate in a physical and mental health formal assessment.
10. Ms. [REDACTED] updated the petitioner's Employability Plan (EP) with a revision in assignments to be: a) 18 hours of employment search; b) 2 hours of employment counseling; and c) 12 hours of work experience with an orientation for the work experience on January 14, 2014.
11. The W-2 Agency determined that the petitioner's supporting documentation for a further W-2 extension could not be approved for the following reasons: a) despite being requested to verify her pregnancy since September, 2013, petitioner failed to submit any verification even as of the January 29, 2014 fact finding; b) petitioner refused to participate in any physical and mental health formal assessment to determine if there was any verifiable medical basis for a further W-2 extension; and c) On January 2, 2014, Dr. [REDACTED] indicated that petitioner had some limitations due to her foot arthritis for six weeks, but even at that time was approved for return to work but with the limitations set forth in Finding of Fact # 8 above.
12. The Milwaukee W-2 agency sent a notice to the petitioner indicating that petitioner's W-2 extension eligibility would end as of March 31, 2014 and no further extension was granted.
13. On January 29, 2014, the W-2 fact finder, Mr. [REDACTED], issued a written Fact Finding Decision affirming the W-2 agency's denial of the petitioner's W-2 extension for the following reasons: a) because petitioner declined the physical and mental health formal assessments, the W-2 agency had no option but to assess the case without regard to her alleged high risk pregnancy; b) the assessment determined that petitioner has a sufficient educational background, has prior

and recent work history, and is released for full-time employment and activity even with her diagnosed foot arthritis condition; c) petitioner is able to compete in the local labor market in Milwaukee and another extension is not appropriate at this time; d) the fact finder reviewed the January 2, 2014 medical Examination and Capacity form and the doctor's diagnosis of "Somatoform disorder" on question #10 under psychological conditions; e) the petitioner refused to agree to any formal assessment to confirm her pregnancy even though she was allegedly about 12 - 14 months pregnant as of January, 2014; f) petitioner refused to obtain any full medical assessment regarding her Somatoform disorder and how it might relate to her request for another W-2 extension request; and g) petitioner has already received W-2 beyond the five years including one 6 month extension for a total of 75 months of W-2 participation.

14. 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 March 18, 2014.

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 further 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 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. 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 record is uncontested that petitioner has received W-2 benefits for the past 75 months including one six month extension. The record is also uncontested that petitioner has failed to provide any medical documentation of her alleged pregnancy even though the verification was requested during September, 2013. In addition, petitioner has refused to participate in any physical and mental health formal assessment. Finally, in the medical exam by Dr. [REDACTED], petitioner’s doctor did approve her return to work, but with some limitation for six weeks. Petitioner failed to provide any medical documentation to confirm that any physical limitation continued after that six week period.

In her January 30, 2014 letter, the petitioner contended that the denial of her request for a further extension was unfair or incorrect. First, petitioner alleged that her first limitation was that she was over 50 years old. However, there is employment for persons in the labor market for persons over 50 years of age, and age over 50 years of age is not “an unusual circumstance.” Second, petitioner contended vaguely without any specifics that due to her alleged “police record”, it was more difficult for her to obtain employment. There does not appear to be any reliable documentation in the Fact Finding record of any such police record. In any case, petitioner has been employed in the past, and her alleged record has not prevented such employment. Third, petitioner alleged vaguely to some “domestic abuse situation” but failed to establish that any such situation, even if true, would prevent her from some employment.

The above law and policy are clear that the W-2 agency must obtain from a person requesting a W-2 extension “. . . written documentation from an appropriate medical, professional, DVR, assessing agency or business to establish incapacities.” Furthermore, the record is clear that the petitioner has not established with any reliable evidence that she meets the requirements of the Department’s rule requiring the W-2 recipient to establish “**unusual circumstances**” for a further W-2 extension pursuant to the WI Admin Code §§ DWD 12.09(2)(n)1-3. 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 April 1, 2014.

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) further extension to the 60-month eligibility time clock as of April 1, 2014.

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 no more than 30 days after the date of this hearing decision. 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 5th day of
May, 2014

Gary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 5, 2014.

Wisconsin Works (W-2)