



STATE OF WISCONSIN

In the Matter of



DECISION

WWW 157134

The attached proposed decision of the Administrative Law Judge dated May 12, 2014, is hereby adopted as the final order of the Department.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST". Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

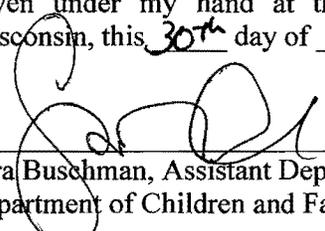
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of JUNE, 2014.



Sara Buschman, Assistant Deputy Secretary
Department of Children and Families



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

In the Matter of:



**PROPOSED
DECISION**

WWW/157134

PRELIMINARY RECITALS

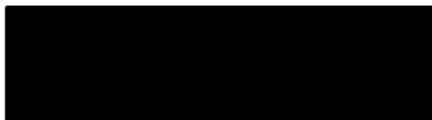
Pursuant to Wis. Stat. § 49.152(1) (2011-12) on March 7, 2014 petitioner filed a request for a Wisconsin Works ["W-2"] Fact-Finding review with Forward Service Corporation, ["FSC"] a W-2 agency. A Fact-Finding review was held on March 25, 2014 and a Fact-Finding decision entitled *Fact Finding Review Summary and Decision*, dated April 1, 2014, was issued by FSC.

Petitioner timely appealed to the Department from the Fact-Finding decision on April 12, 2014. See, Wis. Stat. §49.152(2)(b) (2011-12). The Fact-Finding file was received by the Division of Hearings and Appeals ["DHA"] from FSC on May 1, 2014.

The issue for determination concerns the denial of an application for Emergency Assistance ["EA"].

PARTIES IN INTEREST:

Petitioner:



Wisconsin Department of Children and Families
Room G200
201 East Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707-7946

BY: Ruthi Jimenez, W-2 Worker
Forward Service Corporation
607 East Elizabeth Street
Shawano, Wisconsin 54166

FACT FINDER:
Courtney Windorski, FSC

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County, Wisconsin.
2. The Fact Finding review in this matter was held on March 25, 2014 at the Waupaca County W-2 office in Waupaca, Wisconsin;
3. No audio recording of the March 25, 2014 Fact Finding review was made.

DISCUSSION

The Division of Hearings and Appeals ["DHA"] engages in a *de novo* review of Fact-Finding decisions when such decisions are properly appealed. It is the long-standing policy of DHA, based on the law and going back to the very beginning of the W-2 program in the 1990's, that DHA reviews Fact-Finding decisions *de novo*. The *de novo* review standard has been adopted by the Departmental Secretary as statewide policy in numerous Final Decisions. See, for example, DHA Case WWW-40/36985 (Proposed Decision November 6, 1998; Final Decision June 4, 1999; Amended Final Decision June 28, 1999) (DWD); DHA Case WWW-40/#38235 (Proposed Decision January 21, 1999; Final Decision June 4, 1999; Amended Final Decision June 28, 1999) (DWD).

The first task of a DHA Administrative Law Judge ["ALJ"] is to determine whether the Fact-Finding record is sufficient for review. If it is not sufficient, the ALJ may remand the matter back to the Fact-Finder, conduct a new Hearing (either in person or telephonically), or otherwise augment the record. DHA Case No. WWW-49/54402 (Wis. Div. Hearings & Appeals Final Decision November 5, 2002; Proposed Decision October 2, 2002) (DWD); *Wisconsin Works (W-2) Manual* ["W-2 Manual"] 12.3.1. In this case the Fact-Finding record is not sufficient because no audio recording of the March 25, 2014 Fact-Finding review was made. It is impossible to complete a *de novo* review of a Fact Finding decision without an audio recording of the Fact-Finding review.

An audio recording is particularly important in this case because in his a letter dated April 12, 2014 requesting a review of the April 1, 2014 the Fact-Finding decision petitioner makes reference to statements he has made.

This matter should be remanded back to FSC with instructions to conduct a new Fact-Finding review with an audio recording and issue a new Fact-Finding decision. W-2 Manual 12.3.1. Petitioner may, if he wishes, ask for a DHA review of the new Fact-Finding decision as long as he does so in accordance with law and policy.

It is noted that written policy states: "An audio recording of the Fact Finding review is recommended." W-2 Manual 12.2.5. Written policy also states: "Please note that the Department recommends audio recording Fact Finding Reviews as a best practice." W-2 Manual 12.2.8. In order to make a *de novo* DHA review possible, it is respectfully suggested that audio recordings of Fact Finding reviews should be required, not merely recommended. For this reason this Decision will be issued as a *Proposed Decision*.

The Secretary of the Wisconsin Department of Children and Families ["DCF"] will make the *Final Decision* in this matter. See, Wis. Admin. Code § HA 3.09(9)(b)1. (February 2013).

CONCLUSIONS OF LAW

For the reasons discussed above, this matter should be remanded back to FSC with instructions to conduct a new Fact-Finding review with an audio recording and issue a new Fact-Finding decision.

NOW, THEREFORE, it is

ORDERED

that, if this *Proposed Decision* is adopted by the DCF Secretary as the *Final Decision* in this matter, this matter is REMANDED back to FSC and that, with 10 days of the date of the *Final Decision*, FSC conduct a new Fact-Finding review with an audio recording and issue a new Fact-Finding decision. Petitioner will have the same appeals rights with regard to the new Fact-Finding decision that he would have with any other Fact-Finding decision. The 10-day time period required by this *Order* may be extended only if delay is caused by petitioner and then only by the number of days of delay that is caused by petitioner.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Wisconsin Department of Children and Families ["DCF"] for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2). for final decision-making.

Given under my hand at the city of,
Wisconsin, this 12 day of

May, 2014

SEAN P. MADNEY
Administrative Law Judge
Division of Hearings and Appeals

cc: