



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

In the Matter of

██████ ██████
██
██

DECISION

WWW/157418

PRELIMINARY RECITALS

Pursuant to Wis. Stat. §49.152(1), the petitioner filed a request for a Wisconsin Works (W-2) fact finding review with UMOS, a W-2 agency, on April 15, 2014. A fact finding review was held and a fact finding decision was issued on April 23, 2014.

Petitioner timely appealed to the department from the fact finding decision on May 2, 2014. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on May 29, 2014.

The issue for determination is whether the agency correctly denied Emergency Assistance (EA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
██
██

Wisconsin Department of Workforce Development
PO Box 7946
Madison, WI 53707-7946

By: Sherry Green, EA Worker
UMOS

FACT FINDER: ████████ ██████

ADMINISTRATIVE LAW JUDGE:

Peter W. McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Milwaukee County.
2. Petitioner applied for EA on April 10, 2014, stating that she was let go from employment with Forward Dental on March 21, 2014, and alleging impending homelessness. She presented an April 8, 2014 eviction notice.
3. By a notice dated April 10, 2014, the agency denied EA because petitioner did not document a financial crisis that was due to reasons beyond petitioner's control.

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 and digital recording of the hearing 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 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. EMERGENCY ASSISTANCE DENIAL

EA is designed to meet the immediate needs of eligible persons facing a current emergency. Wis. Adm. Code, §DWD 16.01; Emergency Assistance Manual, §1.1. The emergency can be caused by various circumstances including impending homelessness.

Impending homelessness occurs when the household is experiencing a financial crisis that makes it very difficult to make a rent payment, and the group has been notified that it will be required to leave its housing unless it makes payment immediately. Wis. Adm. Code, §DWD 16.05(3); Emergency Assistance Manual, §4.7. The crisis can be caused by various circumstances including exceptional, unexpected, and necessary expenses that are not the responsibility of a third party such as car repair expenses necessary for transportation to work or medical expenses required to be paid. Wis. Adm. Code, §DWD 16.05(3)(b)4, W-2 Manual, §4.8. The applicant must verify the unexpected expenses and the notice to terminate tenancy. Emergency Assistance Manual, §4.8.1, 4.8.2.

The agency denied the EA request concluding that petitioner did not document a financial crisis that was due to reasons beyond petitioner's control. The fact finder correctly cited to EA policy which provides that:

An EA group is eligible under the condition of impending homelessness for reasons of financial crisis if the group meets the following two criteria:

1. The EA group is experiencing a financial crisis that is due to reasons beyond the control of the caretaker relative(s) or that constitute good cause as determined by the W-2 agency.
...
2. As a result of the financial crisis, the EA group receive a notice in the name of the EA applicant to terminate tenancy because of non-payment of rent or mortgage...

Emergency Assistance Manual § 4.8.

It is undisputed that petitioner met the second criterion. However, the fact finder reviewed the record and hearing testimony and concluded that she did not, in fact, satisfy the first criterion. I concur. The crux of the argument at hearing came down to whether petitioner's employment was terminated due to poor interaction with a patient, or whether her termination was simply an unavoidable consequence of downsizing by the employer. The fact finder had more than sufficient evidence to conclude that the termination was the result of poor patient interaction, and was therefore within her control. I find the fact finder's conclusions to be logical and supported by the evidence in the record. It is clear that the petitioner was not laid off by her employer, but was fired. I note that petitioner's ability to positively interact with patients had been previously noted by her employer in a performance evaluation; as such, the employer's determination to terminate employment due to failure to appropriately handle a patient demonstrates that the termination was not something beyond petitioner's control.

CONCLUSIONS OF LAW

The W-2 Agency had sufficient evidence to deny petitioner's request for EA based upon its conclusion that petitioner did not document a financial crisis that was due to reasons beyond petitioner's control.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

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 Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 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 (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 10th day of
June, 2014

\sPeter W. McCombs
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 June 10, 2014.

Wisconsin Works (W-2)