



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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

WWW/158011

---

**PRELIMINARY RECITALS**

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Forward Service Corporation, a W-2 agency, on April 21, 2014. A fact finding review was held and a fact finding decision was issued on May 21, 2014.

Petitioner timely appealed to the department from the fact finding decision on May 28, 2014. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on July 2, 2014.

The issue for determination is whether the W2 agency correctly determined that the petitioner was overpaid W2 benefits in November and December, 2013.

There appeared at the Fact Finding 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: Ms. Heidrun Kovach, W2 Supervisor  
Forward Service Corp. (Wisconsin Works agency)  
1819 Aberg Ave.  
Madison, WI 53704

**FACT FINDER:** [REDACTED] [REDACTED]

Program Coordr., Forward Service Corp.

...  
**ADMINISTRATIVE LAW JUDGE:**  
Nancy Gagnon  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Dane County.
2. The petitioner's minor children have not resided in her household since June 2011. There is no existing plan for the children to return to her household within six months.
3. The petitioner applied for W2 benefits on approximately October 7, 2013. She received Wisconsin Works (W2) cash benefits on 11/1/13, 11/25/13, 12/9/13 and 12/24/13, with benefits totaling \$494.00. The W2 case closed effective February 4, 2014, when the W2 agency realized that the petitioner's children were not returning to her home.
4. The W2 agency issued a *Wisconsin Works Overpayment Recoupment Notice (Notice)* to the petitioner on February 14, 2014. The Notice advised that the petitioner was overpaid W2 benefits for the fall 2013 activity period. The agency correctly computed the overpayment amount to be \$494.00.
5. At her Fact Finding review, the petitioner asserted that she reported her children's absence to the agency worker at her intake appointment.
6. On January 24, 2014, the petitioner applied for an Emergency Assistance (EA) grant. Although the W2 agency initially advised that she would receive an EA grant, it later rescinded its approval on February 11, 2014.

## 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 Administrative Law Judge, is to determine whether the fact finding record is sufficient for review. If it is not sufficient, the Judge 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 judge 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. 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. Thus, a *de novo* review follows.

### III. THE PETITIONER WAS OVERPAID.

To be eligible for W2 benefits, the applicant must be the custodial parent of a minor child:

#### **49.141 Wisconsin works; general provisions.**

(1) DEFINITIONS. As used in ss. 49.141 to 49.161:

(a) ...

(b) "Custodial parent" means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this paragraph, "legal custody" has the meaning given in s. 767.001 (2) (a).

(c) "Dependent child" means a person who resides with a parent and who is under the age of 18 ...

...

#### **49.145 Wisconsin works; eligibility for employment positions.**

(1) GENERAL ELIGIBILITY. In order to be eligible for Wisconsin works employment positions and job access loans for any month, an individual shall meet the eligibility requirements under subs. (2) and (3). The department may promulgate rules establishing additional eligibility criteria and specifying how eligibility criteria are to be administered. The department may promulgate rules establishing payment and reporting periods as needed to administer this subsection.

(2) NONFINANCIAL ELIGIBILITY REQUIREMENTS. An individual is eligible for a Wisconsin works employment position and a job access loan in a month only if all of the following nonfinancial eligibility requirements are met:

(a) *The individual is a custodial parent.*

(b) The individual has attained the age of 18.

(c) The individual is a U.S. citizen or a qualifying alien, as defined by the department by rule.

[*emphasis added*]

Wis. Stat. §§ 49.141(1)(b) and 49.145(2). *See, in accord, W2 Manual, § 2.2.1.*

The petitioner has minor children. There is no dispute that the petitioner’s children were removed from her care in 2011. They have been in foster care, and have supervised visits with petitioner. Although a reunification is a technical possibility, no credible evidence was submitted into this record to suggest that reunification will occur within the next six months.

The Department has a short-term policy exception to the statute’s custodial parent requirement:

#### **2.8.2.1 Child Welfare Case-by-Case Exception**

A case-by-case exception to the “up-to-three month” temporary absence time period may apply when the absence is due to child welfare issues. Under the following circumstances, the temporary absence time period may be extended to up to six months if all of the following conditions are met:

1. The applicant or participant must report the child’s temporary absence due to child welfare issues to the *W-2* agency within five working days of the child’s temporary absence due to child welfare issues. ...

The W-2 agency will accept a report of a child’s temporary absence from the Child Welfare agency as a report from the parent. ... When the Child Welfare agency is

involved with the family, the W-2 agency must work with the Child Welfare agency to develop and implement procedures to meet the reporting requirement.

2. The Child Welfare agency confirms the child was removed from the home due to child welfare issues (e.g. when juvenile justice issues are involved, only child welfare issues are considered for meeting this policy requirement).
3. The parent maintains an appropriate home for the child based on determinations by the W-2 and Child Welfare agencies (e.g. the parent is not in a treatment center or other out-of-home placement). Because the Child Welfare agency has expertise in making determinations regarding safe and appropriate housing for the reunification of parents with their children, the W-2 agency should base their determination of an appropriate home for the child on the Child Welfare agency's decision. ...
4. The permanency plan and any other Child Welfare agency plan state that the child is expected to be reunified with the parent in the parent's household within six months and the child is not expected to "age out" of child status while in the out-of-home placement.
5. The child's out-of-home placement type is consistent with reuniting the child with the parent in the parent's household within six months of the child's temporary absence from the home (e.g. child is not in a pre-adoptive placement).
6. The custodial parent is cooperating, following through and satisfactorily completing Child Welfare agency appointments and all activities required for reunification with the child.

*W2 Manual*, § 2.8.2.1. The petitioner's children were removed pursuant to a CHIPS order, so the child welfare agency is involved. The children had been out of her home for over six months when she applied for W2 and EA, and there is no plan to return them to her within the next six months. Thus, the petitioner was not eligible for the W2 that she received, or for the EA that she attempted to receive.

The petitioner argues that she was disclosed that her children were not in her home at the time of the W2 application, so the overpayment is not her fault. She believes that she should not have to pay back an overpayment that was not her fault. First, I do not believe that the petitioner was fully candid at the time of her application. She stated that she had a reunification plan in place, but not disclose that her children had been out of her household for over six months. However, even if she had made a full and accurate disclosure, the agency is directed to recover all recent overpayments, even if caused by agency error. *W2 Manual*, 10.3.1 – 10.3.3, at <http://dcf.wisconsin.gov/w2/manual/default.htm>.

I see no error in the Fact Finder's determination or computation of the overpayment amount. I also see no error in the ultimate denial of the EA benefit, per *EA Manual*, § 4.3.

Finally, I note that the petitioner's local Fact Finding request was filed on April 21, 2014. This is more than 45 days after the Department issued its *Wisconsin Works Overpayment Recoupment Notice*, dated February 14, 2014. Wisconsin Statutes require a client to file a Fact Finding request within 45 days of the overpayment notification. Wis. Stat. § 49.152(1). The *Notice* was not part of the Fact Finding record forwarded to me for review. Thus, I cannot know to a certainty that the *Notice(s)* issued to the petitioner advised her of the 45 day filing limit, and I therefore did not dismiss this appeal for late filing. However, if the local agency had introduced the *Notice(s)* with the 45-day language into the Fact Finding record, the Fact Finder could have dismissed the petitioner's Fact Finding request as untimely filed, without further discussion.

**CONCLUSIONS OF LAW**

1. The Fact Finder correctly determined that the petitioner was overpaid \$494 in November and December 2013.
2. The Department may collect the November-December 2013 overpayment from the petitioner.
3. The Fact Finder correctly determined that the petitioner was not eligible for EA benefits in January and February 2014.

**NOW, THEREFORE, it is** **ORDERED**

That the petition 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 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 ,  
Wisconsin, this 8th day of July, 2014

---

\s  
Administrative Law Judge  
Division of Hearings and Appeals  
/

cc:



**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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 8, 2014.

Wisconsin Works (W-2)