



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION ON SECOND LEVEL REVIEW

WWW/158169

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**PRELIMINARY RECITALS**

Pursuant to Wis. Stat. §49.152(1) and Wis. Admin. Code §DCF 101.22(2)(b), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Maximus, a W-2 agency, on May 6, 2014. A fact finding review was held on May 19, 2014 and a fact finding decision was issued on May 23, 2014.

Petitioner timely appealed to the department from the fact finding decision on June 5, 2014. See Wis. Stat. §49.152(2)(b) and (c). The fact finding file was received by the Division on June 30, 2014.

The issues for determination are 1) whether the Fact Finder correctly upheld the Financial Employment Planner (FEP)'s denial of Petitioner's request for an additional extension of Petitioner's Community Service Job (CSJ) and 2) whether the Fact Finder correctly upheld the Petitioner's placement in a Case Management Follow-up) CMF position.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

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

By: Maximus

Wisconsin Works (W-2) Agency  
4201 North 27<sup>th</sup> Street  
4<sup>th</sup> Floor, Suite 400  
Milwaukee, WI053216-1807

FACT FINDER: Thomas Prete

**SECOND LEVEL REVIEWER:**

Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.
2. Petitioner's employment goals are to obtain employment either as office/clerical worker or as a personal care worker (PCW). (Fact Finding File, pg. 71)
3. Petitioner had been in a Community Service Job (CSJ) placement from March 8, 2012 to April 27, 2014. Her last extension began in March 2014 and was scheduled to expire at the end of May 2014. (Fact Finding File, pg. 58 and pg. 77; testimony of Sagioel Haynes, Petitioner's Financial Employment Planner (FEP))
4. Petitioner had been working as a PCW since approximately September 2013 and as such was in a pro-rated CSJ placement. (Testimony of ██████████)
5. At the time in question, the Petitioner had complete four semesters at ██████████ to obtain a degree in Information Technology. Petitioner carried 12 credits during the most recent semester. (Testimony of Petitioner; Testimony of ██████████)
6. On April 28, 2014, the Petitioner's FEP made the decision to place the Petitioner in a Case Management Follow-up (CMF) position because the time limit on her CSJ placement was expiring, but the parties did not complete the necessary paperwork on that date. (Fact Finding File, page 30; testimony of ██████████)
7. On May 6, 2014, the Petitioner filed a request for Fact Finding to contest the denial of an extension of her CSJ placement. (Fact Finding File, pg. 13)
8. On May 8, 2014, the Petitioner met with her FEP and indicated that she had barriers to employment and signed a form indicating that she would complete a Barrier Screening Tool. (Fact Finding File, pgs. 22 and pgs. 73-77; testimony of ██████████)
9. Petitioner suffers from arthritis in her back, but it is well managed with medication and treatment from a pain management clinic. (Testimony of Petitioner)
10. Also on May 8, 2014, Petitioner and the FEP signed a W-2 Agency Time Limit Extension that indicated that the Petitioner was not eligible for an extension of her CSJ placement because she did not make all efforts to find and accept a job. (Fact Finding File, pgs. 78-80)
11. The Fact Finding Appointment took place on May 19, 2014 and the Fact Finder issued a decision on May 23, 2014, upholding the CMF placement because there was nothing preventing the Petitioner from working full-time. The Fact Finder further held that because the Petitioner was appropriately placed in a CMF, the denial of the CSJ extension was appropriate. (Fact Finding File pgs. 6, 7 and 14)
12. The Petitioner filed a request for administrative review that was received by the Division of Hearings and Appeals on June 5, 2014. (DHA file)

## DISCUSSION

### 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 tape recording of the hearing, and the fact finder's file.

## 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.

## BURDEN OF PROOF

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980).

In a case involving the request for an extension of a job placement, the burden of proof fell upon the Petitioner to show the Fact Finder that she met the approval criteria for an extension.

With regard to a change in placement, the agency is the moving party, so the agency has the burden to prove the change in placement was appropriate.

## PETITIONER'S REQUEST FOR AN EXTENSION OF HER CSJ PLACEMENT

Community Service Job (CSJ) placements are intended for individuals who, "are not ready for unsubsidized employment. A CSJ placement provides the opportunity to practice work habits and skills that are necessary to succeed in any regular job environment, including punctuality, reliability, work social skills, and more." *W-2 Manual* §7.4.1

Wis. Stats. 49.148(1)(b)1. states that, "a participant in a Wisconsin Works employment position shall receive the following wages or benefits:...for a participant in a community service job under s. 49.147(4) a monthly grant of \$653." See also W-2 Manual §7.4.1 However, a CSJ participant can receive a pro-rated amount if she is working in unsubsidized employment. Id at §7.4.1.4.1 and §10.1

Subsidized employment positions, including CSJ positions, are limited to 24 months. Wis. Stats. 149.147(4)(b); Wis. Admin Code, §DCF 101.16(3)(e); W-2 Manual, §2.3.2. However, an extension of the 24 month time limit may be granted if the W-2 participant has 1) made all appropriate efforts to search for

unsubsidized employment, 2) is unable to find such employment due to conditions in the local labor market and 3) no trial employment match program job opportunities are available in the specified local labor market. Wis. Stats. 149.147(4)(b); Wis. Admin. Code §DCF 101.16(3)(e)2.

It is undisputed that prior to the agency taking action on May 8, 2014 to change the Petitioner's placement, the Petitioner was in a Community Service Job (CSJ) placement had been so for 27 months, since March 2012. (See also Fact Finding File, pg. 58 – W-2 Placement Summary) Most recently, Petitioner was in a pro-rated CSJ position because she was working an unsubsidized job as a PCW. (Testimony of ██████████)

Clearly, the Petitioner received at least one extension of her CSJ placement in March 2014. Indeed, Petitioner's FEP testified to that. Thus, one can conclude that up until March 2014, the Petitioner 1) had made appropriate efforts to search for unsubsidized employment, 2) was not able to find such employment, due to labor market conditions and 3) there were no trial employment match program job opportunities in the specified local labor market.

According to the testimony of Petitioner's FEP, ██████████, she declined to grant the Petitioner a second extension in late April, early May 2014, because she did not believe the Petitioner made enough of an effort to find and accept a job as a PCW and that the Petitioner spent too much time focusing on applying for clerical positions. (See also Fact Finding File, pgs. 78-79 – W-2 Agency Time Limit Extension Record) Consequently, the agency denied Petitioner's request for an extension and moved the Petitioner into a Case Management Follow-up (CMF) placement.<sup>1</sup>

Petitioner's Employment Plan states two goals, to find work as a PCW and or as a clerical worker. (Fact Finding File, pg. 71) Thus, it is not unreasonable to expect the Petitioner's job search to include applications for full-time PCW positions, particularly since she had been working at least 10 hours per week as a PCW.

The Fact Finder held the record open to obtain a print-off of the Petitioner's job searches from MilwaukeeJobs.com, and relied upon that search information to conclude that the Petitioner had not adequately searched and applied for such employment. (See Fact Finding File, pgs. 100-121)

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<sup>1</sup> Participants in CMF placements do not receive any payments from the W-2 program. W-2 Manual §§7.2.1 and 10.1

Wis. Stats. §49.153 states the following:

**49.153 Notice before taking certain actions.**

- (1) WRITTEN AND ORAL NOTICE. Before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in Wisconsin Works, a Wisconsin Works agency shall do all of the following:
  - (a) Provide to the participant written notice of the proposed action and of the reasons for the proposed action.
  - (c) After providing the notice under par. (a), allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.
- (2) RULES. The department shall promulgate rules that establish procedures for the notice under sub. (1)(a) and that define "reasonable time" for the purpose of sub. (1)(c).

Petitioner did not raise any concerns with regard to notice, so for the purposes of this review, it is presumed the Petitioner had adequate notice that her CSJ position was scheduled to expire in May 2014, and along with it the W-2 payments.

The printouts indicate that the Petitioner applied for 60 jobs between March 1, 2014 and May 8, 2014.<sup>2</sup> However, of those 60 applications, only one position on the list was clearly for a PCW:

4/25/14 Personal Care Attendant – Independence First

The petitioner made no claim and provided no evidence to support a finding that there were no other PCW positions available for which she could have applied. As such, it is found that the greater weight of the credible evidence supports the Fact Finder's determination that the Petitioner was not eligible for a further extension of her CSJ placement and correctly upheld the denial.

The Petitioner asserted that she should have an extension because she does not currently earn enough to support her family. However, that is not one of the criteria for determining whether a CSJ extension is appropriate.

#### **WAS THE CMF PLACEMENT APPROPRIATE?**

Under Wis. Stats. §49.147(2)(am), in lieu of placing the individual in a Wisconsin Works employment position, such as a CSJ, a Wisconsin Works agency may provide case management services (CMF placement), which may include those services specified in s. [49.1475](#), to an individual who applies for a Wisconsin Works employment position if the Wisconsin Works agency determines all of the following:

- a. The individual meets both the financial and non-financial eligibility requirements for the W-2 program under s. [49.145 \(2\)](#) and [\(3\)](#).
- b. The individual is willing to work and has no barriers to employment that cannot be addressed with Wisconsin Works services.
- c. The individual is job-ready, based on the individual's employment history or education.
- d. The most appropriate placement for the individual is in unsubsidized employment.

It is undisputed that the Petitioner meets all eligibility requirements for the W-2 program. It is also undisputed that the Petitioner is willing to work; indeed she has been working at least 10 hours per week as a PCW since November 2013. At the Fact Finding Hearing, the Petitioner testified that her only barrier to employment might be arthritis in her back, but that it is currently well managed with medication and treatment from a pain management center. As such, Petitioner has no barriers to employment that cannot be addressed with W-2 services.

Petitioner contended that she was not job ready because she only had 7-8 months of experience as a PCW and no one would hire her with so little experience. However, the Petitioner provided no evidence to support this contention. On the contrary, the fact that Petitioner was working as a PCW in unsubsidized employment is proof that she is employable as a PCW. Further, the Petitioner has been able to attend school while working and has two years of post-secondary education from [REDACTED], which should increase her marketability for both PCW and clerical work. Based upon Petitioner's employment history and education, it is reasonable to conclude that she is job ready and that the most appropriate placement for the Petitioner is in unsubsidized employment.

At the hearing, the Petitioner stated that her main objection to the CMF placement was that she would no longer be receiving a W-2 payment and that would make it difficult to support her family. However, whether or not a person is receiving a W-2 payment is not a determining factor in deciding whether a person is ready for a CMF placement.

Based upon the foregoing, it is found that the greater weight of the credible evidence supports the Fact Finder's determination that the Petitioner's placement was correctly changed to CMF.

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<sup>2</sup> We need not look at postings prior to March 1, 2014, because by granting the Petitioner an extension at that time, the agency concedes that Petitioner made an adequate job search, but was not able to secure unsubsidized employment due to labor market conditions.

**CONCLUSIONS OF LAW**

The W-2 Fact Finder correctly upheld the denial of Petitioner’s request to extend her CSJ placement and correctly upheld Petitioner’s placement in CMF.

**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. 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  
Milwaukee, Wisconsin, this 10th day of  
July, 2014

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals  
MMI/mmi



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The preceding decision was sent to the following parties on July 10, 2014.

Wisconsin Works (W-2)