



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

AMENDED DECISION

WWW/170918

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**PRELIMINARY RECITALS**

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with America Works, a W-2 agency, on November 5, 2015. A fact finding review was held on November 11, 2015 and a fact finding decision was issued on November 18, 2015.

Petitioner filed a request for hearing with DHA on December 18, 2015. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on June 15, 2016.

This decision was amended after issuance upon noting that the ALJ had failed to delete text from an earlier draft version of the Decision.

The issue for determination is whether petitioner's request for DHA review was timely.

There appeared at that time and place 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:

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

FACT FINDER: Samantha Wendt

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.
2. Petitioner was enrolled in W-2.
3. Petitioner's W-2 was terminated by the agency, America Works, effective 10/31/15.
4. Petitioner requested a fact-finding review from the agency on November 5, 2015.
5. The fact-finding hearing occurred on 11/11/15.
6. On 11/18/15 the agency issued its fact-finding review decision. This review decision informed petitioner that she had a right to a DHA review of the agency fact-finding if such request were filed within 21 days.
7. Petitioner filed a hearing request with DHA on December 18, 2015.

## 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 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.

### **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.

A threshold question, however, is whether the request for review by the Division of Hearings and Appeals is a timely one. Petitioner initially requested DHA review the termination of W-2 on December 18, 2015. If petitioner wished DHA review of the fact-finding decision, the request to DHA was due within 21 days of that fact-finding decision. See Wis. Stat. § 49.152(2)(b). This 21-day deadline was stated on the fact-finding decision sent to petitioner and dated November 18, 2015. Thus, the deadline for the filing of a hearing request was December 8, 2015. But, petitioner did not file a request for hearing to DHA until December 18, 2015 which was 10 days late.

I must conclude that petitioner’s request for a DHA review of the fact-finding was untimely, and the fact finder’s decision must stand.

### **CONCLUSIONS OF LAW**

Petitioner’s request for a DHA review was untimely; the fact finder’s decision thus is upheld.

**NOW, THEREFORE, it is ORDERED**

That 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.

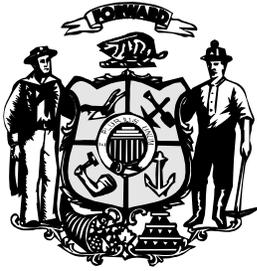
The appeal must also be served on the other “PARTIES IN INTEREST” named in this decision. The process for appeals to the circuit court is in Wisconsin Statutes, §§ 227.52 and 227.53.

Given under my hand at the city of  
Madison, Wisconsin, this 20th day of  
June, 2016

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John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals

cc:



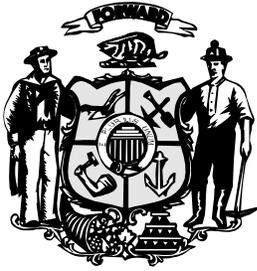
**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 15, 2016.

Milwaukee Enrollment Services  
Wisconsin Works (W2)



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 20, 2016.

Milwaukee Enrollment Services  
Wisconsin Works (W2)