

Sub ready
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

Racine, WI 53403

PROPOSED
DECISION

WWW-51/20992

PRELIMINARY RECITALS

Pursuant to a petition dated December 15, 1997 and filed December 15, 1997 under Wis. Stat. § 49.152(1) (1995-96), *as amended by* 1997 Wis. Act 27, to review a decision by the Racine County Workforce Development Center W-2 agency (Racine Agency) relating to W-2, a Fact Finding Review was held on January 6, 1998 by Carol McGilsky of the Racine Agency. A decision, entitled *W-2 Fact Finding Review Form*, dated January 13, 1998, resulted from the fact finding process. Petitioner appealed that January 13th decision to the Division of Hearings and Appeals (DHA). Petitioner's appeal letter, dated February 2, 1998, was received by DHA, via FAX, on February 2, 1998. The Fact Finding File was received by DHA on February 12, 1998.

An Interim Decision, dated February 20, 1998, was issued in this matter ordering that both parties were permitted (but not required) to file briefs in this matter. On March 2, 1998 a letter brief, dated March 2, 1998, was received via FAX from petitioner.

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Racine, Wisconsin 53403

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BY: Carol McGilsky
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EXAMINER: Sean P. Maloney, Hearing Examiner
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner [REDACTED] is a resident of Racine County,
2. Petitioner is a participant in the Wisconsin works program (W-2).
3. On or about September 11, 1997 the Racine Agency placed petitioner into a category it calls "Case Management for Job Ready (@MS)".
4. In the C-MS category petitioner receives no financial support, either directly or indirectly, from the Racine Agency.
5. Petitioner was not employed on or about September 11, 1997 and has not been able to obtain employment.

DISCUSSION

Petitioner argues that her placement into the CMS category was not correct because no such W-2 category exists in the law, Petitioner is correct-

A W-2 participant may, under the law, be placed only into one of the following four categories: unsubsidized employment; trial jobs; community service job; or, transitional placement. Wis. Stat. § 49.147 (1995-96), as amended by 1997 Wis. Act 27; Wis. Admin. Code §§ DWD 12.03(7), 12.03(28) & 12.16

(October 1997); *Wisconsin Works (W-2): Policies and Procedures* (June 1997) section II, chapter 6. A W-2 participant cannot be placed into the **unsubsidized** employment category unless **they** are **actually** employed. Wis. Stat. § 49.147(1)(c) (1995-96), as **amended by** 1997 Wis. Act 27; Wis. Admin. Code §§ DWD 12.03(35) (October 1997). All **three** of the other **categories** require the W-2 agency to provide financial support, either **directly or indirectly**, to **the** W-2 participant. Wis. Stat. § 49.148(1) (1995-96), as **amended by** 1997 Wis. Act 27; Wis. Admin. Code § DWD 12.18(1) (October 1997).

Petitioner was not employed at **the time** of her **placement** and has **not been able to obtain** employment. **Petitioner, therefore, cannot** be **placed** into the **unsubsidized** employment category. Thus, under W-2, a **proper placement for petitioner must** be in one of the three **remaining categories**: **trial jobs**; **community service job**; or, **transitional placement**. A **placement** in the **category** of "**CMS**" clearly **was not** proper since **no such category exists** in the law. **Furthermore**, the "**CMS**" category, **unlike trial jobs**, **community service job** and **transitional placement**, does not **require any** financial support of **petitioner by** the **Racine Agency**.

W-2 policy does appear to provide for the "**CMS**" category and also for a category called "**Case Management Only (CMO)**", neither of **which requires** any financial support of **the** participant by the W-2 agency. **BWI Operations Memo, No. 97-77, file 1250.13, 2499, date 07/13/1997; BWI Operations Memo, No. 97-68, file 1250.13, 2499, date 07/16/1997; BWI Operations Memo, No. 97-56, file 1250.13, 2499, date 06/25/1997; Wisconsin Works (W-2): Policies and Procedures** (June 1997) section III. Neither the "**CMS**" category nor the "**CMO**" category exists in the law. When **policy is not** consistent with law, law **must** be followed. Thus, it is incorrect to place a W-2 participant in either the "**CMS**" or the "**CMO**" category, since those categories exist only in policy and not in law.

The issue here is not **whether** or not petitioner is participating in W-2. The issue is, **given the fact that** petitioner is **participating** in W-2, **whether** she may be placed in a "**CMS**" category. According to state law, W-2 is not an entitlement. Wis. Stat. § 49.141(4) (1995-96); Wis. Admin. Code § DWD 12.06(5) (October 1997). However, it does not follow from this that **the law** need not be **followed** with regard to those who are participating in W-2. W-2 must be administered according to the law.

Finally, **petitioner** has **presented** much extrinsic information concerning the **legislative** intent **underlying** the W-2 law. I find the language of the **W-2 law**, insofar as is **relevant** here, to be clear and unambiguous. If the language of a law is **clear** and unambiguous, then reference to **extrinsic** aids is unnecessary. *Appointment of Interpreter In State v. Lea*, 184 Wis.2d 860, 867 n. 2. 517 N.W.2d 144 (1994); see also, *Oneida Tribe of Indians of Wisconsin v. State of Wisconsin*, 95 F.2d 757 (7th Cir. 1991), *Meiers v. Wang*, 192 Wis.2d 115, 128, 531 N.W.2d 54 (1995).

CONCLUSIONS OF LAW

Petitioner's placement in the category of "**CMS**" was not proper since no such category exists in the law, Petitioner cannot be placed into the W-2 unsubsidized employment category because she is not employed