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

In the Matter of



Milwaukee, WI 53218

DECISION

WWW-40/47472

**PRELIMINARY RECITALS**

Pursuant to Wis. Stat. § 49.152(1) (1999-00), petitioner filed a request for a Wisconsin Works (W-2) Fact Finding review with Employment Solutions, Inc. of Milwaukee Wisconsin (ES), a W-2 agency, on December 1, 2000. A Fact Finding review was held by ES on December 12, 2000. A Fact Finding decision was issued dated December 19, 2000 (Fact Finding Review Number 5-/-179-00).

The petitioner timely appealed to the Department from the Fact Finding decision on January 9, 2001. See, Wis. Stat. §49.152(2)(b) (1999-00). The complete Fact Finding file was not received by the Division of Hearings and Appeals (DHA) until January 22, 2001.

The issue for determination is whether it was correct for ES not to process the W-2 application received from petitioner on October 3, 2000 because petitioner signed a form entitled "Voluntary Decline of W-2 Services".

**PARTIES IN INTEREST:**

Petitioner:



Milwaukee, Wisconsin 53218

Petitioner's Representative:

Patricia DeLessio  
Attorney At Law  
Legal Action Of Wisconsin, Inc.  
230 West Wells Street  
Room 800  
Madison, Wisconsin 53203

Wisconsin Department of Workforce Development  
P.O. Box 7946  
Madison, Wisconsin 53707-7946

B Y : Paul Hammes, Esq., ES Grievance Officer  
Employment Solutions, Inc.  
Milwaukee Job Center North  
4030 North 29<sup>th</sup> Street  
Milwaukee, Wisconsin 53216

FACT FINDER: Christine Koehler, Attorney, Employment Solutions, Inc.

HEARING OFFICER:

Sean P. Maloney  
Administrative law Judge  
Division of Hearings and Appeals

FINDINGS OF FACT

- 1.. Petitioner (S [REDACTED]) is a resident of Milwaukee County.
2. On October 3, 2000 petitioner met with an ES service consultant and completed a "Wisconsin Works (W-2) Application"; she also provided ES with several documents concerning her medical condition and stated that she was not-working-due to her medical condition. Exhibits #1, #2, #3, #6, #7, #8, #9, #10 & #12.
3. On October 5, 2000 petitioner met with an ES Financial and Employment Planner (FEP); petitioner was told that W-2 was a work program and if she could not work she should sign a form entitled "Voluntary Decline of W-2 Services"; petitioner explained that she could not work due to her medical condition and, at first, refused to sign the form and asked repeatedly to speak with a supervisor; petitioner's request to speak with a supervisor was refused, instead, the FEP and another ES employee told petitioner that if she did not sign the form she would have to leave; petitioner finally signed the form because she thought she had no choice and understood that by doing so she would not be declining a W-2 Transitions (W2-T) placement. Exhibit #4.
4. ES did not process petitioner's W-2 application because petitioner had signed the form entitled "Voluntary Decline of W-2 Services". Exhibit #4.

DISCUSSION

Any individual may apply for any component of W-2. Wis. Stat. § 49.141(3) (1999-00); Wis. Admin. Code § DWD 12.06(1) (July 2000); Wisconsin Works Manual § 1.1.0.5. Once application is made, the W-2 agency must process the application in accordance with the prompt timelines set forth in law, contract, and policy. See, Wis. Stat. § 49.143(2)(f) (1999-00); Wis. Admin. Code §§ DWD 12.03(31) & 12.06(4) (July 2000); Wisconsin Works Manual § 4.5.0 & 5.1.0. This includes making an initial assessment of the skills, prior work experience, and employability of each applicant prior to placement in a W-2 employment position. Wis. Admin. Code § DWD 12.15(1) (July 2000); Wisconsin Works Manual § 5.1.0. Additionally, every individual who requests assistance from a W-2 agency must, by law, be provided with a single page description of all the benefits and services that may be provided to any individual by the W-2 agency. Wis. Stat. § 49.143(2)(es) (1999-00).

W2-T is a component of W-2 designed for persons who cannot work due incapacitation. Wis. Stat. § 49.147(4); Wis. Admin. Code § DWD 12.16(4) (July 2000); Wisconsin Works Manual § 7.3.2. Clearly, petitioner desired to apply for W2-T. The fact that petitioner applied for W-2, explained that she could not work due to her medical condition, and supplied ES with considerable documentation of her medical condition was more than sufficient to alert ES to this desire. In these circumstances it was not only wrong, but it was unconscionable, for ES to insist that petitioner sign a form entitled "Voluntary Decline of W-2 Services". It was wrong for ES to tell petitioner that W-2 was a work program and if she could not work she should sign a form entitled "Voluntary Decline of W-2 Services". As noted above, W2-T is a component of W-2 designed for persons who cannot work due incapacitation.

ES properly should have processed petitioner's application for W-2 and made an eligibility decision. It is incumbent on W-2 agencies to process a W-2 application if there is any indication at all that an applicant desires to participate in W-2. Here, *there* was ample such indication. The presumption must be that an application for W-2 will be processed and an eligibility decision made. Only when there can be no doubt at all that a person neither desires nor needs W-2 services should a "Voluntary Decline of W-2 Services" form be used.. This is not such a case.

Despite the error made by ES, the only remedy available to petitioner is to reapply for W-2 and have her application processed and an eligibility decision made. The eligibility date for W-2 employment position wages or benefit payment is the date the applicant has met all W-2 eligibility requirements and has begun participation in a W-2 employment position. Wis.' Stat. § 49.152(3) (1999-00); Wis. Admin. Code § 12.12 (July 2000); Wisconsin Works Manual § 4.5.1.

Petitioner requests that ES be ordered to place her in a W2-T position. Petitioner's request cannot be granted. The only **issue presented** by this appeal is the delayed processing of petitioner's application -- not the appropriateness of a W2-T position for petitioner. Consequently, the issue of whether or not a W2-T position is appropriate for petitioner. is not ripe for decision. Furthermore, petitioner states that she requests an order placing her in a W2-T position because ES would not accept a new application from her after the December 12, 2000 Fact Finding. However, during a January 24, 2001 telephone conference call with ES and petitioner's attorney ES stated that it was error not to accept a new application and **that** a new application from petitioner would be Accepted.

#### CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct for ES not to process the W-2 application received from petitioner on October 3, 2000 because petitioner signed a form entitled "Voluntary Decline of W-2 Services"; however, the only remedy available to petitioner is to reapply for W-2 and have her application processed and an eligibility decision made.

**NOW, THEREFORE, it is**

#### . ORDERED

That petitioner may reapply for W-2 and have her application processed and an eligibility decision made; if petitioner reapplies for W-2 her application should be given prompt and meaningful attention and the processing of her application should be expedited.

#### 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 examiner 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 twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. 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 filed no-more ~~than thirty~~ (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, \_\_\_\_\_ if you ask for *one*).

Appeals for benefits concerning must be served on Wisconsin Department of Workforce Development  
P.O. Box 7946, **Madison, Wisconsin** 53707-7946

The appeal **must** also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
**Madison, Wisconsin**, this 31 d a y  
of January, 2001.

THIS IS A CERTIFIED COPY OF THE  
FINDINGS AND DECISION MADE IN THIS  
MATTER AND FILED IN THE DIVISION OF  
HEARINGS AND APPEALS IN THE CITY  
OF MADISON, WISCONSIN.

  
Sean P. Maloney, Hearing Examiner  
Division of Hearings and Appeals  
01302001/SPM

xc:

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