

Chapter 19 W-2 DISPUTE RESOLUTION

19.1.0 INTRODUCTION

There are two levels of review under the W-2 Dispute Resolution process: 1) a Fact Finding review; and 2) a Departmental review.

The purpose of the Fact Finding review is to resolve disputes for applicants and participants who disagree with a W-2 agency's decision. This includes decisions regarding all W-2 services including Learnfare, Job Access Loans, and Emergency Assistance. A Departmental review may then be requested if an individual or the W-2 agency disagrees with the final Fact Finding decision.

Individuals who disagree with an agency's decision regarding Medicaid, BadgerCare Plus, FoodShare or Refugee Cash and Medical Assistance benefits must file a separate request for a Fair Hearing with the Department of Administration, Division of Hearings and Appeals. Participants must follow the current Fair Hearing time frame. (See [Income Maintenance Manual, Section 1.2, Fair Hearings](#))

19.2.0 PETITION FOR FACT FINDING REVIEW (First Level Review)

The Fact Finding review, which is the first level of the dispute resolution process, is completed by the W-2 agency.

19.2.1 Timeframe for Requesting a Fact Finding Review

Individuals who believe that an agency decision regarding any component of W-2, Job Access Loans, Learnfare, or Emergency Assistance, is incorrect may request a Fact Finding review by the W-2 agency. The fact finding request must be made within 45 calendar days from the mailing date of the CARES Notice of Eligibility for W-2 services or within 45 calendar days of the mailing date for manual EA or JAL notices, or within 45 calendar days from the effective date of the decision announced in the notice, whichever is later. If the 45th day falls on a weekend or holiday, the calculated date will be the next business day. If the request is received within the 45-day timeframe, the W-2 agency must schedule a Fact Finding review. If the request for a Fact Finding review is received beyond the 45-day timeframe, the W-2 agency must notify the applicant or participant that a Fact Finding review will not be scheduled.

Fact Finding requests must be made in writing and should be submitted using the [Request for Wisconsin Works \(W-2\) Fact-Finding Review form \(10783\)](#) or other documentation containing the same information found in the form. A W-2 agency must also accept phone requests for Fact Finding reviews and must document the phone request using the form.

W-2 payments shall not be continued pending the Fact Finding decision.

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19.2.1.1 *Timeframe for Requesting Learnfare Fact Finding Reviews*

A request for a Learnfare Fact Finding review must be made within 45 calendar days from the mailing date of the Learnfare Penalty Notification stating the student is not in compliance with Learnfare requirements or within 45 calendar days from the effective date of the decision announced in the notice, whichever is later. However, a Learnfare financial penalty will not be imposed if the participant or family requests a Fact Finding review within 10 calendar days after the date of the Learnfare Penalty Notification. In this situation, a Learnfare penalty will not be imposed until after the Fact Finding decision is issued and is favorable to the agency, unless the participant withdraws the petition in writing or abandons the petition. If the Learnfare Fact Finding request is made more than 10 calendar days after the date of the Learnfare Penalty Notification, the Learnfare penalty must be imposed.

19.2.2 **Application Decision**

Applicants may file a written request to the W-2 agency to complete a Fact Finding review of a decision if that individual believes the denial of an application for W-2 services is incorrect, the employment position placement was inappropriate, or the application was not acted upon with reasonable promptness. The W-2 agency must receive the request in writing within the 45-day timeframe.

19.2.3 **Termination or Reduction of W-2 Payments**

Participants who believe that the reduction or termination of their W-2 payments is incorrect may submit a written request for a Fact Finding review to the W-2 agency. This includes overpayment determinations. The W-2 agency must receive the request within the 45-day timeframe.

19.2.4 **Fact Finder**

Each W-2 agency must have at least one individual assigned to conduct Fact Finding reviews. The Fact Finder must:

- Be a person other than the one who took action on the case;
- Be neutral and provide an objective review and decision regarding the dispute; and
- Have a full and complete understanding of all impacted programs.

It is expected that the Fact Finder will conduct an orderly review and, if there is any disruptive or combative behavior by anyone participating in the review, the Fact Finder may either adjourn or exclude participation by any disruptive individuals.

W-2 agencies may choose to establish a process with another W-2 agency to assist in providing a thorough and objective Fact Finding review.

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19.2.5 Fact Finding Review

The Fact Finding review is an informal process to resolve issues and permit the petitioner (individual requesting the Fact Finding review) and W-2 agency to present information regarding the proposed action or inaction. The W-2 agency must date stamp all requests for Fact Finding reviews the date the request was received. The agency must notify the petitioner of the scheduled Fact Finding review appointment within three work days after the date the request for review is received by the agency. The agency must use the [Wisconsin Works \(W-2\) Agency Fact Finding Review Notice form \(10782\)](#) to notify the individual of the time, place and date of the scheduled Fact Finding review. The date of the Fact Finding review must be within five work days after the date that the *Wisconsin Works (W-2) Agency Fact Finding Review Notice form (10782)* is mailed.

An audio recording of the Fact Finding review is recommended. All participants must be informed of the recording.

19.2.5.1 Pre-Fact Finding Review Resolutions

At any time up to the date of the scheduled Fact Finding review, the W-2 agency may contact the petitioner to discuss the disputed issue and offer a resolution. If the petitioner does not agree with the agency's proposed resolution, the Fact Finding review must be held.

If the petitioner agrees to the agency's proposed resolution, the resolution must be documented using the [Wisconsin Works \(W-2\) Services Fact-Finding Review Voluntary Withdrawal form \(11155\)](#) and signed by the petitioner. The documented resolution must include any actions agreed upon by both the petitioner and the W-2 agency.

19.2.6 Fact Finding Review Attendance

The W-2 agency worker who made the decision being disputed should attend the Fact Finding review when possible to present the facts regarding the decision. If that worker is unable to attend the Fact Finding review, another staff person must be present and prepared to represent the agency's actions. The petitioner must also attend the review. The petitioner may have a representative present to assist in contesting the agency's decision. The process must provide for flexibility. If all parties are not able to attend in person, teleconferencing should be offered.

In order to prepare for the Fact Finding review, the petitioner or the representative may request to view and copy any records pertaining to the decision. If the cost of copying the records is more than \$30, repayment may be sought. (This is assuming a \$.10 charge per page, which would allow up to 300 pages of copies before requiring payment.)

If the petitioner fails to attend the Fact Finding review without good cause, the request for review is considered abandoned. If the petitioner's representative is present and the petitioner is not, the petitioner or the representative must provide a

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good cause reason for non-attendance. (See [Chapter 11](#) for more information on good cause.)

19.2.7 W-2 Agency Representative's Responsibility at the Fact Finding Review

The FEP or W-2 worker must be prepared to introduce at the review any testimony, exhibits and material from the case record or other sources pertinent to the disputed issue. The FEP or W-2 worker must:

- Define the issues.
- Review the facts of the case and be familiar with the case as a whole. If more than one issue is disputed, the FEP or W-2 worker must be familiar with the policies that relate to all issues being raised.
- Ensure that the case record is complete and all necessary documents are present, appropriate, complete and in chronological order. Appropriate documents include W-2 activity assignment notifications, signed W-2 Participation Agreements, employability plans, and any correspondence to support the actions of the W-2 worker.
- Thoroughly document events pertaining to the issue with the date, place and identity of any person involved, including documentation of conversations. Dates of phone calls, names of the person taking the phone call, dates of letters, etc. should be documented for presentation.
- Identify and present W-2 Manual citations and Operations Memos related to the issue(s). Check to ensure that the policy citation was relevant at the time of the action.

19.2.8 Testimony & Evidence

Once the FEP or W-2 worker has presented documentation to support the action, the petitioner must be provided the opportunity to rebut the information. If credibility is an issue, the Fact Finder must determine which party was most credible based on testimony or evidence presented during the hearing. Factors used to weigh the evidence include:

- Was testimony or evidence in conflict with other testimony or evidence in the record?
- Does the individual have firsthand knowledge?
- Does the individual appear to be telling the truth?
- Will s/he benefit from hiding the truth?
- Has evidence been presented that the petitioner has been unreliable or inconsistent in the past?

At the conclusion of the Fact Finding review, the Fact Finder must have the participant sign the [Wisconsin Works \(W-2\) Agency Fact-Finding Review form \(10784\)](#). This form is used to document attendance, the issue in dispute, the affected program, a brief summary of the facts presented, and the Fact Finder's final decision. If a participant refuses to sign the *Wisconsin Works (W-2) Agency Fact-Finding Review form (10784)*, the Fact Finder will request that the petitioner write a separate statement regarding the information that is not in agreement.

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If the Fact Finder determines that additional documentation may exist that will support statements made during the review, the Fact Finder may hold the record open for a specified number of days to allow the submission of the additional documentation. However, no new information may be submitted by the agency unless the petitioner is offered an opportunity to rebut the new information.

19.2.9 Fact Finding Decision

The Fact Finder must weigh all factors when making the final decision. The Fact Finder shall issue a decision within five work days after the review date. This date may be extended as appropriate by the Fact Finder if the petitioner's request to submit additional evidence has been granted. It may be possible that some disputes are resolved during the Fact Finding meeting and the decision can be issued at that time. The decision must be documented on the [Wisconsin Works \(W-2\) Agency Fact-Finding Review form \(10784\)](#).

On the same day the Fact Finder reaches a final decision, a certified or true written copy of the decision must be mailed by 1st class mail to the last known address of the petitioner. The Fact Finder must ensure that the date of the final decision is the same as the mailing date, taking into consideration postal holidays. The notice must include the final decision as well as the appropriate remedy, citing the source of the decision, and provide information regarding the individual's right to appeal the Fact Finding decision by requesting a Departmental review.

The W-2 agency shall deny a petition for a Fact Finding review or refuse to grant relief if the petitioner does any of the following:

1. Withdraws the petition in writing.
2. Abandons the petition. Abandonment occurs if the petitioner or the representative fails to appear at the scheduled review without good cause. (See [Chapter 11](#) for more information on good cause.)

19.2.10 Fact Finding Remedies

W-2 agencies are bound by the Fact Finding decision for a particular case. W-2 agencies must comply with the Fact Finding decision within 10 calendar days after the decision date.

If a W-2 agency is unable to comply with a Fact Finding decision for any reason, the W-2 agency must contact its Division of Family Supports (DFS) Regional Administrator (RA) on or before the 10th calendar day and explain the circumstances why the decision cannot be carried out timely. Cases in which a fact finding decision is not carried out timely, and no attempt has been made to contact the RA to explain why, may result in a corrective action or a failure penalty as defined in the W-2 and Related Programs Contract.

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19.2.10.1 *Remedy for Paid W-2 Placements*

If the decision overturns the agency's denial of a paid W-2 employment position, the W-2 agency shall place the individual in the first available paid employment position that is appropriate for the individual. An individual is eligible for a payment for the employment position beginning on the date the individual begins participation in a paid placement. No retroactive cash payment for the period prior to participation shall be issued.

If the decision indicates a payment was calculated, reduced or terminated improperly, the W-2 agency shall restore the W-2 payment to the appropriate level retroactive to the date on which the payment was incorrectly calculated, reduced or terminated. However, the payment must be based on completed participation.

19.2.10.1.1 *Remedy for Custodial Parent of an Infant (CMC) Placements*

If the decision overturns the agency's denial of a CMC placement, the W-2 agency shall place the individual in the CMC placement effective the date of the baby's birth or the date of the application, whichever was later. Because there are no participation requirements for participants placed in CMC, a retroactive cash payment shall be issued.

If the decision overturns the agency's end date of the CMC placement, the agency shall correct the end date and a retroactive cash payment shall be issued.

19.2.10.2 *Remedy for Unpaid W-2 Placements*

Case management placements include CMF, CMU, CMD, CMN, CMM and CMP. If the decision overturns the placement begin date, end date, or the services provided as part of the case management placement, the W-2 agency shall provide appropriate services based upon policy regarding that placement and any new information that was gathered in the Fact Finding process.

19.2.10.3 *Remedy for Job Access Loans*

If the decision overturns the agency's denial of a Job Access Loan (JAL) due to an error in financial or nonfinancial eligibility determination, the agency must re-examine the JAL eligibility based on the new information.

19.2.10.4 *Remedy for Emergency Assistance*

If the decision overturns the agency's denial or improper calculation of Emergency Assistance due to an error in financial or nonfinancial eligibility determination, the agency shall issue the Emergency Assistance payment or an additional Emergency Assistance payment amount based on the new information.

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19.2.11 Fact Finder File

At the end of the review process, the Fact Finder must have a complete Fact Finding file. The file must be a complete and thorough written record of the review and must include the following:

- [Request For Wisconsin Works \(W-2\) Fact-Finding Review form \(10783\)](#) or its equivalent;
- [Wisconsin Works \(W-2\) Agency Fact Finding Review Notice form \(10782\)](#) or its equivalent;
- [Wisconsin Works \(W-2\) Services Fact-Finding Review Voluntary Withdrawal form \(11155\)](#) (if relevant);
- The audio recording of the Fact Finding review;
- Information and evidence presented by the W-2 agency and by the petitioner; and
- [Wisconsin Works \(W-2\) Agency Fact-Finding Review form \(10784\)](#).

19.2.12 Reporting Fact Finding Information In CARES

W-2 agencies are required to enter Fact Finding information such as the Fact Finding request date, the review date, the reason for the Fact Finding request, pre-Fact Finding resolutions, Fact Finding attendance and the results of Fact Finding reviews into CARES by the 10th day of each month for the prior month.

19.2.13 Summary of Fact Finding Timelines

Below is a summary of the various timeframes that must be adhered to throughout the Fact Finding process by the applicant/participant, the W-2 agency or the Fact Finder.

- An *applicant/participant* must request a Fact Finding review within 45 calendar days from the mailing date of the CARES Notice of Eligibility for W-2 services or within 45 calendar days of the mailing date for manual EA or JAL notices, or within 45 calendar days from the effective date of the decision announced in the notice, whichever is later.
- The *W-2 agency* must notify the petitioner of the scheduled Fact Finding review appointment within three work days after the date the request for review is received by the agency.
- The *W-2 agency* must schedule the Fact Finding review within five work days after the date that the [Wisconsin Works \(W-2\) Agency Fact Finding Review Notice form \(10782\)](#) is mailed.
- The *Fact Finder* shall issue a decision within five work days after the review date.

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- The *Fact Finder* must mail a certified or true written copy of the decision by 1st class mail to the last known address of the petitioner on the same day a final decision is reached.
- The *W-2 agency* must comply with the Fact Finding decision within 10 calendar days after the decision date.
- The *W-2 agency* is required to enter Fact Finding information such as the Fact Finding request date, the review date, the reason for the Fact Finding request, pre-Fact Finding resolutions, Fact Finding attendance and the results of Fact Finding reviews into CARES by the 10th day of each month for the prior month.

19.3.0 DEPARTMENTAL REVIEW (Second Level Review)

If an individual or the *W-2 agency* disagrees with the final Fact Finding decision, they may appeal the decision by requesting a Departmental review with one exception. The one exception is that a *W-2 agency* may not appeal a Fact Finding decision related to Emergency Assistance, but the individual may.

The Department of Administration, Division of Hearings and Appeals (DHA) will complete the Departmental review. This review is a limited review of the record and the decision of the *Fact Finder*.

19.3.1 Timeframe for Requesting a Departmental Review

The petition for a Departmental review of a *W-2* decision including a Job Access Loan decision must be received by the DHA within 21 calendar days after the date on which the certified copy of the Fact Finding decision is mailed (the same date as the Fact Finding decision).

The petition for a Departmental review of an Emergency Assistance decision must be received by the DHA within 14 calendar days after the date on which the certified copy of the *W-2* Fact Finding decision is mailed (the same date as the Fact Finding decision).

DHA shall date stamp requests for a Departmental review. DHA will promptly notify the *W-2 agency* of receipt of a request for a Departmental review. DHA will fully review the *W-2 agency's* Fact Finding decision by completing a desk review. The *W-2 agency* must submit the Fact Finding file to DHA within five work days after receipt of the request.

If after reviewing the Fact Finding file, DHA determines that the file is inadequate, DHA may do any of the following:

1. Remand the file to the *W-2 agency* to provide additional information;
2. Hold a teleconference interview with the petitioner and *W-2 agency* representative; or

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3. Request written supplementation from the petitioner or W-2 representative.

DHA may grant a postponement of a telephone conference if the petitioner is not available due to a good cause reason. DHA may grant an extension of the decision.

The Department shall deny a petition or shall refuse to grant relief if the applicant or participant withdraws the petition for a Fact Finding review in writing.

DHA must complete its review within 10 work days of the receipt of the Fact Finding file, unless DHA determines the file is inadequate.

19.3.2 Proposed Departmental Review Decisions

DHA may issue a proposed decision rather than a final decision. Whenever a decision concludes that a manual or handbook provision is invalid or too limited under a state statute, the decision must be issued as proposed.

When DHA issues a proposed decision, it solicits comments from all parties and instructs the W-2 agency that the decision is proposed and should not be acted upon. All parties may send written comments or objections to the proposed decision to DHA within 15 calendar days of receipt of the proposed decision. Upon request, DHA may extend the deadline for written comments.

After the 15-day comment period has ended, DHA sends the proposed decision and all comments or objections to the Department of Workforce Development (DWD). The Secretary of DWD reviews the proposed decision and issues the final decision. The Secretary's final decision can be to agree to or reverse the proposed decision or amend current policy. The final decision made by the Secretary is communicated by DHA to the individual and the W-2 agency. The final decision must be acted upon by the W-2 agency if the decision is in favor of the individual.

If the final decision ruled current department policy to be incorrect, the W-2 agency must continue to follow the current policy in all other cases until the Department changes that policy.

19.3.3 Departmental Review Final Decision

The Departmental review final decision is based upon the review of the Fact Finding file, information obtained during a telephone conference, or written supplementation. The Departmental review final decision contains the following information:

- The facts presented from the Fact Finding file;
- Any additional statements (oral or written);
- The conclusions applicable from pertinent law; and
- The Departmental review order.

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A certified or true copy of the written decision of the Departmental review must be issued to the applicant or participant and the W-2 agency.

19.3.4 Departmental Review Remedies

W-2 agencies are bound by the Departmental review final decision for a particular case. W-2 agencies must comply with the Departmental review decision within 10 calendar days.

In order to ensure compliance, DHA sends the W-2 agency a *Certification of Administrative Action* (DHA-18) form along with the decision. This form must be completed and sent back to DHA in order to certify that appropriate action has been taken within 10 calendar days. The form should not indicate what the agency will do, but, rather, what the agency has already done to comply with the order. In addition to sending the form back, DHA requires agencies to include copies or make note of CARES screens that have been used to record the action taken. DHA will not close out the case file until there is evidence in CARES that action has been taken.

As with Fact Finding decisions, if a W-2 agency is unable to comply with a Departmental review decision for any reason, the agency must contact its DFS Regional Office on or before the 10th calendar day and explain the circumstances why the decision cannot be carried out timely. Noncompliance with DHA decisions may result in a corrective action or a failure penalty as defined in the W-2 and Related Programs Contract.

DFS may find that the final decision's principles and policies require a change in program operations. If so, DFS will make a statewide directive. Until such a declaration, the W-2 agency must continue to follow existing written policies and procedures in all other cases.

The remedies allowed under Departmental review decisions are the same remedies allowed under Fact Finding review decisions. (See section 19.2.10.1 through 19.2.10.4 for more information on remedies.)

19.4.0 PUBLIC ASSISTANCE OVERPAYMENT TAX INTERCEPT ADMINISTRATIVE HEARINGS

When W-2 agency benefit overpayment actions are not successful, the Public Assistance Collection Unit (PACU) located in DWD serves as the State's central collection section for the recovery of delinquent public assistance overpayments. The PACU is responsible for administering the tax intercept program through the Central Recoveries Enhanced System (CRES). Public assistance overpayments may be collected through the interception of Wisconsin state tax refunds, including tax credits. Once the individual is notified of the intended tax intercept action, he or she has 30 calendar days to appeal the interception. Public assistance overpayment tax intercept administrative hearings are conducted by DHA.

W-2 agencies, including both private W-2 agencies and county-administered W-2 agencies, are required to attend all overpayment related hearings including tax

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intercept hearings as they relate to respectively administered programs. Although the PACU operates the tax intercept program, the agency that initiated the overpayment is responsible for attending and providing adequate case documentation to support the state's collection actions in a tax intercept hearing.

19.4.1 Role of W-2 Agency in Tax Intercept Hearing

A tax intercept hearing may be limited to the tax intercept issue or questions of prior payment or debtor identity; however, under certain circumstances the Administrative Law Judge may decide to review the underlying merits of the overpayment. This can include inquiries such as how the overpayment was calculated and whether proper notice to the debtor(s) had been provided. Therefore, the agency must attend the hearing and be prepared to defend the original overpayment determination as well as the tax intercept action.

Documentation that the W-2 agency should present at the hearing may include:

- The policy supporting the agency's action (i.e., why the overpayment occurred);
- Any relevant documentation supporting the overpayment, for example:
 - Original overpayment notices and worksheets, dunning notices, signed repayment agreements;
 - CARES budget and issuance screens;
 - CARES case comments;
 - Employment verifications;
 - Fraud investigations, if applicable; and
 - Any related Fact Findings for W-2/JAL.

The DHA will notify W-2 agencies of all requested administrative tax intercept hearings. W-2 agencies are required to prepare a statement within 10 calendar days of receiving a hearing notification explaining the disputed action, which is being appealed to DHA. A copy of this statement must be forwarded to the PACU at the following address or fax number:

Public Assistance Collection Unit (PACU)

PO Box 8938
Madison, WI 53708-8938
1-800-943-9499
Fax: 608-266-8302.

DHA will also send a subsequent notice with the date, time and location of the tax intercept hearing via email.

The tax intercept hearing will be held in the petitioner's current county of residence. If the case has been transferred to another W-2 agency since the overpayment determination, both the current agency and the previous agency will be notified of requested appeals. The agency where the overpayment originated is the agency that must attend and provide supporting information for any requested tax intercept hearing. An agency can request to attend the hearing by telephone in a transferred case situation or at any other time that a telephone appearance is warranted. The

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notice of scheduled hearing will list the Administrative Law Judge and his/her telephone number to contact for requested telephone appearances.