

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Joint Committee on  
Finance (JC-Fi)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR\_RCP\_pt01a
- 05hrAC-EdR\_RCP\_pt01b
- 05hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

➤ \*\*

➤ Committee Hearings ... CH

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Hearing Records ... HR

➤ \*\*

➤ Miscellaneous ... Misc

➤ 97hrJC-Fi\_Misc\_pt130d\_LFB

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Time Limit for Participation in W-2 (Workforce Development -- Economic Support and Child Care)**

[LFB Summary: Page 686, #6]

## CURRENT LAW

### **State Law**

In order to be eligible for a Wisconsin Works (W-2) employment position, the total number of months in which the individual has actively participated in the job opportunities and basic skills (JOBS) program or has participated in a W-2 employment position or both may not exceed 60 months. The statutes provide that participation in the JOBS program counts toward the 60-month time limit beginning July 1, 1996. However, the Department's emergency rules for W-2 specify that participation in JOBS counts beginning October 1, 1996.

The 60-month time limit may be extended if the local W-2 agency determines, in accordance with rules promulgated by the Department, that unusual circumstances warrant an extension of the participation period.

State law also provides that only one individual in a W-2 group may participate in a subsidized employment position at any time.

### **Federal Law**

Under the 1996 federal welfare reform legislation (P.L. 104-193), funding provided to the state under the temporary assistance to needy families (TANF) block grant, may not be used to provide assistance to a family if the family includes an adult who has received assistance under

any state TANF program for 60 months, whether or not consecutive. The time limit begins on the date the state's TANF plan was approved (August 22, 1996, in Wisconsin).

In calculating the time limit for any individual, the state must disregard any month for which assistance was provided with respect to the individual and during which the individual was a minor child and not the head of a household or married to the head of a household.

Federal law requires that states also disregard months during which the adult lived on an Indian reservation or Alaskan Native Village if the reservation or village had at least 1,000 residents and at least 50% of the adults were unemployed.

States may expend funds not originating with the federal government on benefits for children or families that have become ineligible for TANF assistance by reason of the 60-month time limit. However, if the federal Department of Health and Human Services determines that a state is not complying with the 60-month time limit during a fiscal year, the state's basic TANF grant for the following fiscal year may be reduced by 5% (\$15.9 million in Wisconsin).

The federal law allows, but does not require, states to exempt families from the 60-month time limit by reason of hardship or if the family includes a member who has been battered or subjected to extreme cruelty. The number of exemptions allowed under this provision in a fiscal year may not exceed 20% of the average monthly number of families receiving assistance in that year.

## GOVERNOR

Specify that the number of months an individual has participated in any program in Wisconsin or any other state in which the individual received benefits that were funded by TANF block grant monies would count toward the 60-month time limit for receipt of benefits under the W-2 program.

Provide that participation in the JOBS program would count toward the 60-month time limit beginning October 1, 1996, rather than July 1, 1996, as under current law. This would correspond to the Department's emergency rule for W-2.

Require the W-2 agency to include in the time limit for an individual any month in which any adult member of the W-2 group was a participant, if the individual was a member of the W-2 group during that month. Currently, the 60-month limit applies only to participation by the individual. Under the budget bill, the 60-month limit would apply to the entire family.

Specify that if an individual becomes a member of a new W-2 group in which another adult member has participated in JOBS or a W-2 employment position or has received TANF-funded benefits, the W-2 agency would be required to attribute to that individual either the

number of months in which the individual participated, or the number of months in which the other adult member of the W-2 group participated before the individual became a member of the W-2 group, whichever is greater.

Require the W-2 agency to exclude from the time limit any month during which any adult in the W-2 group participated in the JOBS program or a W-2 employment position, or received TANF-funded benefits while living on a federally recognized American Indian reservation or in an Alaskan Native Village if the population of the reservation or village was at least 1,000, and at least 50% of the adults living in the reservation or village were unemployed.

## **DISCUSSION POINTS**

1. Under current state law, time limits apply to an individual and not a family. Therefore, a family with two adults may participate for a total of 120 months (60 months for each individual). However, under federal law, time limits apply to the entire family so that assistance may not be provided if a family includes an adult who has received assistance for 60 months. The budget provision is intended to comply with federal law.

2. The Governor's recommendation imposes a stricter requirement than federal law for certain individuals. Under the Governor's proposal, if a person becomes a member of a new W-2 group, that person could have counted toward the 60-month limit the time attributed to another adult in the group if that time is greater than the person's own. Effectively, the person could have time attributed to them during which she or he was not receiving assistance as a member of a W-2 group.

3. The Committee could modify the Governor's recommendation to provide that, for new W-2 groups, the time limit would be reached when the individual that has participated in W-2 for the greatest number of months reaches 60 months, but that each individual would have only the amount of time attributed to them during which the member was an adult in a W-2 group.

4. The federal Welfare Reform Technical Corrections Act of 1997 (H.R. 1048) contains several modifications to the 1996 federal welfare reform legislation. One of the issues addressed in the bill is the federal provision that requires states to disregard residents of Indian reservations from the 60-month time limit. In particular, the current provision relies upon data that may not be available, excludes certain areas within the standard definition of Indian reservation and could have the unintended effect of making the disregard inapplicable to residents of a large number of Indian reservation areas.

5. To address these problems, the federal corrections bill includes language that would allow states to disregard from the calculation of the 60-month time limit any month during which the adult lived on an Indian reservation, in Indian country occupied by a tribe, or in an Alaskan Native village, if the most reliable federal data available indicate that at least 50 percent

of the Indian adults living in such areas were not employed. The technical corrections bill has not yet been enacted, however, it has been passed by the House of Representatives and is being considered by the Senate.

6. In order to account for the potential change to the federal provision, the Committee could modify the Governor's recommendation to require that assistance provided while an individual was living on a federally recognized American Indian Reservation, in Indian country occupied by a tribe or in an Alaskan Native Village would be excluded from the calculation of the individual's 60-month time limit to the extent required by federal law.

**ALTERNATIVES TO BASE**

1. Adopt the Governor's recommendation.
2. Adopt the Governor's recommendation with one or more of the following modifications:
  - a. Clarify that for new W-2 groups, the 60-month time limit would be reached when the individual that has participated in W-2 for greatest number of months reaches 60 months, but that each individual would have only that amount of time attributed to them during which the individual was an adult member of a W-2 group.
  - b. Provide that, in calculating the number of months of participation for any individual, the W-2 agency must disregard time during which the individual was living on an Indian reservation or Alaskan Native Village or time living in Indian country occupied by a tribe to the extent permitted by federal law.

MO# AH#2a+b

JENSEN	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
2GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

Prepared by: Joanne Simpson

BURKE	<input checked="" type="checkbox"/>	N	A
DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 14 NO 2 ABS \_\_\_\_\_

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **W-2 Dispute Resolution (Workforce Development -- Economic Support and Child Care)**

[LFB Summary: Page 688, #7]

## CURRENT LAW

Under current law, a two-part process is established for reviewing decisions by local Wisconsin Works (W-2) agencies. The first step of the process allows individuals to petition the local agency for review of certain decisions. If the agency's review does not result in a decision that is acceptable to the individual, he or she can then petition the Department of Workforce Development (DWD) for review of the agency's decision. The W-2 agency may also request a review by the Department. These provisions are described below.

**W-2 Agency Review.** Any individual whose application for a W-2 employment position is not acted upon by the local W-2 agency with reasonable promptness, as defined by DWD by rule, may petition the W-2 agency for review of such action. A petition for review may also be made if the application is denied in whole or in part, if the individual's benefit is modified or canceled, or if the individual believes that the benefit was calculated incorrectly. Review is not available if the agency's action occurred more than 45 days prior to submission of the petition for review.

Upon a timely petition for review, the agency must give the applicant or participant reasonable notice and opportunity for a review. The agency must render its decision as soon as possible after the review and send a certified copy of its decision to the applicant or participant. The agency will be required to deny a petition for review or refuse to grant relief if the petitioner withdraws the petition in writing or abandons the petition. Abandonment occurs if the petitioner

fails to appear in person or by representative at a scheduled hearing without good cause, as defined by DWD by rule.

**DWD Review of Agency Financial Eligibility Determinations.** If the agency's decision involves denial of an application based solely on the determination of financial ineligibility, DWD must review a decision by a W-2 agency if: (a) the applicant or participant petitions the Department for review of the decision within 15 days of receiving the agency's decision; or (b) the W-2 agency requests DWD to review the agency's decision.

**DWD Review of Other Agency Decisions.** If the agency's decision does not involve denial of an application based solely on the determination of financial ineligibility, DWD is authorized, but not required, to review a decision by a W-2 agency if: (a) the applicant or participant petitions the Department for review of the decision within 15 days of receiving the agency's decision; or (b) the W-2 agency requests DWD to review the agency's decision.

## GOVERNOR

Modify the W-2 dispute resolution process as follows:

- a. Authorize any individual whose application for any component of W-2 (including an employment position, job access loan, health care, child care or other assistance) is not acted upon with reasonable promptness or denied, or who believes that the benefit was calculated incorrectly or that he or she was placed in an inappropriate W-2 employment position, to petition the W-2 agency for a review of such action. *Under current law, only applicants for a W-2 employment position may petition for a review. Current law does not specify that an individual may petition for a review for reason of being placed in an inappropriate employment position.*
- b. Specify that a certified copy of the decision by the W-2 agency must be sent by first class mail to the last-known address of the applicant or participant. *Current law does not specify that the decision must be sent by first class mail, nor does it specify that it must be sent to the last known address.*
- c. Authorize the applicant or participant to petition the Department for a review of the W-2 agency's decision within 14 days after the date on which the certified copy of the W-2 agency decision is mailed. *Under current law, the applicant or participant has 15 days from the time he or she receives the decision to petition the Department for a review.*
- d. Specify how the W-2 agency must correct actions that have resulted in a denial of a benefit to an eligible individual. Under the Governor's recommendation, the W-2 agency would be required to place the individual in the first available and appropriate W-2 employment position if the Department or W-2 agency determines that: (a) an individual's application for a W-2 employment position was denied based on eligibility, but the individual was in fact eligible;

or (b) the individual was placed in an inappropriate W-2 employment position. The individual would be eligible to receive the benefit for the W-2 employment position beginning on the date the individual starts employment or education and training activities for that position. The bill would also specify that if the W-2 agency or the Department determines that a participant's benefit was incorrectly modified, canceled or calculated, the benefit must be restored to the appropriate level determined by the W-2 agency or the Department, retroactive to the date on which the error first occurred. *Current law does not specify any corrective measures that must be taken by the Department or W-2 agency.*

## DISCUSSION POINTS

1. Under the current AFDC program, decisions made by county departments of human/social services may be appealed to DWD. The appeals are actually conducted by the Division of Hearings and Appeals, which is attached to the Department of Administration. DWD indicates that this arrangement will likely be continued under W-2. As part of the transition to W-2, the Department has directed county agencies to conduct pre-hearing investigations and to use pre-hearing examiners to resolve disputes at the county level.

2. The Governor's recommendation would expand the current dispute resolution process under W-2 by allowing individuals to request a review of agency decisions regarding all components of W-2 instead of just decisions concerning employment positions. In addition, specific remedies (including retroactive benefit payments in certain cases) for eligible participants who have been denied benefits due to incorrect agency decisions would be established. From the participants' perspective, these changes would enhance the review process.

3. The Governor's proposal to modify the time period within which an individual must petition DWD for review of an agency decision would be somewhat more restrictive than present law. Under the current provision, the 15-day filing period does not begin until the petitioner receives the agency's decision. Under the budget proposal, the filing period would be reduced to 14 days, which would begin on the date that the agency mails its decision to the participant. The Department indicates that this provision would establish a certain date on which the appeal must be filed and would be consistent with requirements for appeals under the unemployment compensation program and other programs administered by DWD.

4. Since the W-2 legislation was introduced in the Fall of 1995, interest has been expressed in establishing a review process that is more like the procedure under the current AFDC program. There are several differences between the fair hearing provisions under AFDC and the review provisions for W-2 under existing law and the Governor's proposal:

- Under the AFDC program, if a petition is filed within 45 days of the county's decision, DWD is generally required to review the decision. In contrast, under W-2, the Department is only required to review agency decisions that involve the denial of an application based solely

on the determination of financial ineligibility. For other types of decisions, DWD is authorized, but not required, to review the local agency's decision. Review is required at the local agency level, however.

- The AFDC provisions require DWD to provide a petitioner reasonable notice and opportunity for a "fair hearing", while the W-2 provisions only allow for "review" by the agency or DWD. The fair hearing process under AFDC allows individuals to present evidence and testimony, be represented by legal counsel and have access to records pertaining to their case. The statutes for W-2 do not specifically require DWD to provide these opportunities to petitioners. However, the Department indicates that these provisions will likely be included in the review process under W-2. Also, the emergency rules for W-2 specify that no part of an individual's case record may be withheld from a petitioner (or his or her authorized representative) during preparation of a review. The rules do not provide additional guidance concerning how the review process will be conducted.

- Under AFDC, if a petitioner files a timely petition, benefits generally may not be suspended, reduced or discontinued until a decision is rendered after the hearing, but AFDC may be recovered by DWD if the contested decision is upheld. However, benefits may not be continued if the recipient is contesting a state or federal law and not the recipient's grant computation, or if the recipient is notified of a change in his or her grant while the hearing decision is pending, but the recipient fails to request a hearing on the change. The petitioner must be promptly informed in writing if AFDC is to be suspended, reduced or terminated pending the hearing decision. The Governor's proposal for W-2 would require retroactive benefit payments under certain circumstances; however, there is no requirement to continue benefits while an appeal is pending under the current W-2 dispute resolution process or under the Governor's proposal.

- The AFDC provisions require DWD to render its decision as soon as possible after the hearing and to send a certified copy of its decision to the petitioner, the county clerk and the county officer charged with administration of AFDC. Under W-2, similar provisions are required for review of decisions at the local agency level; however, prompt review and notification are not specifically required for reviews of agency decisions conducted by DWD.

The appendix provides more detailed information regarding the dispute resolution process under the AFDC statutes.

5. The dispute resolution provisions under W-2 were designed, in part, to discourage frivolous appeals that are believed to occur under the review process for AFDC. In particular, it is anticipated that the provisions that allow, rather than require, DWD to hear most types of appeals and that eliminate the continuation of benefits while an appeal is pending will lead to fewer unwarranted appeals. However, it is also possible that these provisions will discourage individuals from filing legitimate appeals of agency decisions, and the denial of benefits while an appeal is pending could impose a financial hardship on families, even if retroactive benefits

are subsequently paid. Another intent of the W-2 provisions is for most disputes to be settled at the local agency level rather than requiring DWD to intervene.

6. If the AFDC provision requiring benefit payments to be continued while a review is pending were adopted for W-2, it could result in increased costs if the Department is unable to recover benefits paid to individuals who are subsequently determined, through the review process, to be ineligible. The process of recovering benefit overpayments could also increase administrative costs. However, it is not possible to reliably estimate the fiscal impact of these factors. Other provisions of the AFDC review process, such as the requirement that DWD review all types of agency decisions, could also result in higher costs.

7. The state Learnfare provisions, as they relate to W-2 participants, contain a cross reference to the current AFDC fair hearing process, which will be repealed six months after the statewide start-up of W-2. In order to ensure that a review process continues to be available under Learnfare, the cross reference should be modified to refer to the W-2 dispute resolution provisions.

## ALTERNATIVES TO BILL

### W-2 Dispute Resolution

1. <sup>FAIL</sup> Approve the modifications recommended by the Governor to the dispute resolution process for W-2.

2. Modify the Governor's recommendation by deleting one or more of the following items:

a. The provision authorizing any individual whose application for any component of W-2 is not acted upon with reasonable promptness or denied, or who believes that the benefit was calculated incorrectly or that he or she was placed in an inappropriate W-2 employment position, to petition the W-2 agency for a review of such action.

b. The requirement that a certified copy of the decision by the W-2 agency must be sent by first class mail to the last-known address of the applicant or participant.

c. The requirement that a petition for DWD to review a W-2 agency's decision be made within 14 days after the date on which the copy of the W-2 agency decision is mailed.

d. The provisions specifying how the W-2 agency must correct actions that have resulted in a denial of a benefit to an eligible individual.

3. <sup>FAIL</sup> Modify the Governor's recommendation by adopting one or more of the provisions outlined below, which are similar to the fair hearing process under AFDC:

a. <sup>FAIL</sup> Require DWD to review any decision by a W-2 agency if: (a) the applicant or participant petitions the Department for review of the decision within 15 days of receiving the agency's decision (or within 14 days after the date on which the certified copy of the W-2 agency decision is mailed if the Committee modifies the filing deadline as recommended by the Governor); or (b) the W-2 agency requests DWD to review the agency's decision.

b. <sup>FAIL</sup> Specify in the statutes that the review process at both the W-2 agency level and at DWD must allow individuals to present evidence and testimony, be represented by legal counsel and have access to records pertaining to their case.

c. <sup>FAIL</sup> Provide that, if a petitioner files a timely petition, W-2 benefits generally may not be suspended, reduced or discontinued until a decision is rendered after the hearing, but may be recovered by DWD if the contested decision is upheld. Specify that benefits must be suspended, reduced or discontinued if the recipient is contesting a state or federal law or a change in state or federal law and not the recipient's grant computation, or if the recipient is notified of a change in his or her benefits while the hearing decision is pending, but the recipient fails to request a hearing on the change. Provide that the petitioner must be promptly informed in writing if benefits are to be suspended, reduced or terminated pending the hearing decision. Specify that these provisions would apply to both levels of review under the W-2 provisions.

d. <sup>FAIL</sup> Specifically require DWD to render its decision as soon as possible after the hearing and to send a certified copy of its decision to the applicant or participant and to the W-2 agency.

4. <sup>Default</sup> Maintain current law.

### Learnfare Technical Modification

1. <sup>PASS</sup> Modify the Learnfare statutes as they relate to W-2 participants to refer to the W-2 dispute resolution provisions rather than to the AFDC fair hearing provisions.

2. Maintain current law.

*W2-Dispute Resolution*

MO# <u>3a, bc</u>									
JENSEN	Y	<del>N</del>	A	BURKE	<del>X</del>	N	A		
OURADA	Y	<del>N</del>	A	DECKER	<del>X</del>	N	A		
HARSDORF	Y	<del>N</del>	A	GEORGE	<del>X</del>	N	A		
ALBERS	Y	<del>N</del>	A	JAUCH	<del>X</del>	N	A		
GARD	Y	<del>N</del>	A	WINEKE	<del>X</del>	N	A		
KAUFERT	Y	<del>N</del>	A	SHIBILSKI	<del>X</del>	N	A		
LINTON	<del>Y</del>	N	A	COWLES	Y	<del>N</del>	A		
COGGS	<del>Y</del>	N	A	PANZER	Y	<del>N</del>	A		

AYE 8 NO 8 ABS \_\_\_\_\_

Prepared by: Rob Reinhardt



WORKFORCE DEVELOPMENT--ECONOMIC SUPPORT AND CHILD CARE

W-2 Dispute Resolution

Motion:

Move to modify the provisions regarding review of W-2 agency decisions as follows:

a. Provide that an individual may seek review of agency decisions regarding any component of W-2 rather than only decisions regarding W-2 employment programs.

b. Eliminate the current provision which requires individuals to seek review at the local agency level prior to petitioning DWD for review.

c. Provide that if an individual files a timely petition, DWD must give the applicant or participant reasonable notice and opportunity for a fair hearing. Specify that the Department would be allowed to make any additional investigation it considers necessary. Require notice of the hearing to be provided to the petitioner and, if appropriate, to the county clerk. Provide that the W-2 agency could be represented at the hearing. Require DWD to render its decision as soon as possible after the hearing and to send a certified copy of its decision to the petitioner, the county clerk, if appropriate, and the W-2 agency. Specify that DWD's decision would be final, but could be revoked or modified as altered conditions may require. Require DWD to deny a hearing petition or to refuse to grant relief if: (1) the petition is withdrawn in writing; (2) the sole issue in the petition concerns an automatic grant adjustment or change for a class of participants as required by state or federal law; or (3) the petitioner abandons the petition.

d. Specify that if a participant requests a hearing prior to the effective date of the action by the W-2 agency or within 10 days after the mailing of the notice of the action, whichever is later, benefits may not be suspended, reduced or discontinued until a decision is rendered after the hearing but may be recovered by DWD if the agency's decision is upheld. Provide that, until a decision is rendered, the manner or form of benefit payment may not change to a protective, vendor or two-party payment. Specify that benefits would have to be suspended, reduced or discontinued if: (1) the participant is contesting a state or federal law or law change and not the participant's benefit computation; or (2) the participant is notified of a change in his or her benefit while the hearing decision is pending but the participant fails to request a hearing on the change. Require that the participant must be promptly informed in writing if benefits are to be suspended, reduced or terminated pending the hearing decision.

Note:

This motion would replace the current dispute resolution process under W-2 with the fair hearing provisions under the AFDC program.

MO# MO 7006

JENSEN	Y	<del>N</del>	A
OURADA	Y	<del>N</del>	A
HARSDORF	Y	<del>N</del>	A
ALBERS	Y	<del>N</del>	A
GARD	Y	<del>N</del>	A
KAUFERT	Y	<del>N</del>	A
LINTON	<del>Y</del>	N	A
COGGS	<del>Y</del>	N	A

BURKE	<del>Y</del>	N	A
DECKER	<del>Y</del>	N	A
GEORGE	<del>Y</del>	N	A
JAUCH	<del>Y</del>	N	A
WINEKE	<del>Y</del>	N	A
SHIBILSKI	<del>Y</del>	N	A
COWLES	Y	<del>N</del>	A
PANZER	Y	<del>N</del>	A

AYE 8 NO 8 ABS \_\_\_\_\_

MO 7006  
Motion #3143

## APPENDIX

### Fair Hearing Process Under the Current AFDC Program

Under current state law relating to AFDC, any person whose application for AFDC is not acted upon by a county department administering AFDC or tribal governing body with reasonable promptness after the filing of an application, or is denied in whole or in part, whose award is modified or canceled, or who believes the award to be insufficient, may petition DWD for a review of the action. The petition must be filed no later than 45 days after the decision or failure to act.

If a timely petition is filed, DWD must give the petitioner reasonable notice and opportunity for a fair hearing. DWD may make an additional investigation that it deems necessary. Notice of the hearing must be provided to the petitioner and the county clerk. DWD is required to render its decision as soon as possible after the hearing and must send a certified copy of its decision to the petitioner, the county clerk and the county officer charged with administration of AFDC. The decision is final, but may be revoked or modified as altered conditions may require.

DWD must deny a petition for a hearing and must refuse to grant relief if the petitioner withdraws the petition in writing, abandons the petition or the sole issue in the petition concerns an automatic grant adjustment or change for a class of recipients as required by state or federal law, unless the issue concerns the incorrect computation of a grant of AFDC. A petitioner abandons a petition when he or she fails to appear in person or by a representative at a scheduled hearing without a good cause.

Generally, if a petitioner files a timely petition, aid may not be suspended, reduced or discontinued until a decision is rendered after the hearing, but AFDC may be recovered by DWD if the contested decision or failure to act is upheld. In addition, until a decision is rendered after the hearing, the manner or form of AFDC payment to the recipient may not change to a protective or direct payment. However, AFDC must be suspended, reduced or discontinued if the recipient is contesting a state or federal law or a change in state or federal law and not the recipient's grant computation, or if the recipient is notified of a change in his or her grant while the hearing decision is pending, but the recipient fails to request a hearing on the change. The petitioner must be promptly informed in writing if AFDC is to be suspended, reduced or terminated pending the hearing decision.

Under current law, the above-described fair hearing and review process also applies to medical assistance decisions. However, due to the sunset of the AFDC program under current law, this process will not apply to either AFDC or MA beginning on the first day of the sixth month beginning after the date DWD indicates in the Wisconsin Administrative Register as the statewide implementation date for the W-2 program.

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Aid to 18-Year-Old Students (Workforce Development--Economic Support and Child Care)**

[LFB Summary: Page 695, #16]

## CURRENT LAW

Under current law, eligibility for aid to families with dependent children (AFDC) generally ends on a child's 18th birthday. However, a person who is 18 years of age, and enrolled in and regularly attending a secondary education classroom program leading to a high school diploma may receive an AFDC payment provided the person had received AFDC benefits prior to their 18th birthday, but not as a foster child in a foster home. The monthly benefit is the amount that the person was entitled to under the AFDC program when the person was a 17-year-old. However, if the person's family became ineligible for aid on the individual's 18th birthday, the person receives \$249 per month, the AFDC benefit amount for a one-person family.

## GOVERNOR

Eliminate payment under the AFDC program for 18-year-old high school students who are ineligible for AFDC solely because of their age. This provision would take effect on the day after publication of the budget bill.

## DISCUSSION POINTS

1. Under the Wisconsin Works (W-2) legislation (1995 Wisconsin Act 289), no person may be eligible to receive benefits under the state's basic AFDC program beginning on

January 1, 1999, or the first day of the sixth month beginning after the statewide starting date for W-2, whichever is sooner. Act 289 also ends the following programs related to AFDC on that date: job opportunities and basic skills (JOBS), the parental and family responsibility pilot project and the work-not-welfare pilot. Most other current provisions relating to AFDC will be repealed six months after the start-up of W-2.

2. Act 289 did not include a specific sunset date for the provisions regarding assistance to 18-year-old students, which are in a separate section of the statutes from the basic AFDC program. The Governor's recommendation would clarify that these provisions would be repealed along with the other components of the AFDC program.

3. The budget provision would eliminate the provisions for 18-year-old students on the day after publication of the bill. The other AFDC provisions will sunset six months after the statewide start-up of W-2, which is expected to occur on September 1, 1997. In order to be consistent with the sunset date for the other elements of the AFDC program, the budget provision could be modified to repeal the statutes regarding aid to 18-year-old students on the first day of the sixth month beginning after the statewide starting date for W-2.

4. A separate portion of the bill includes \$32.6 million for AFDC benefits during the first two months of 1997-98. The administration indicates that this funding has not been reduced to reflect the elimination of aid to 18-year-old students. Therefore, if the Committee modifies the effective date of the budget provision, the funding for AFDC benefits would not need to be adjusted. If the effective date recommended by the Governor is retained, the AFDC funding amount could be decreased by \$15,000 in 1997-98.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to eliminate payment under the AFDC program for 18-year-old high school students who are ineligible for AFDC solely because of their age, effective on the day after publication of the budget bill. Reduce funding for AFDC benefits by \$15,000 in 1997-98.

<u>Alternative 1</u>	<u>ALL FUNDS</u>
1997-99 FUNDING (Change to Base)	- \$15,000
[Change to Bill]	- \$15,000]

2. <sup>PASS</sup> Eliminate payment under the AFDC program for 18-year-old high school students who are ineligible for AFDC solely because of their age, effective on the first day of the sixth month beginning after the statewide starting date for the W-2 program.

Prepared by: Rob Reinhardt

Page 2

MO# 114#2

JENSEN	<input checked="" type="checkbox"/>	N	A	BURKE	<input checked="" type="checkbox"/>	N	A
OURADA	<input checked="" type="checkbox"/>	N	A	DECKER	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A	GEORGE	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A	JAUCH	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A	WINEKE	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A	SHIBILSKI	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A	COWLES	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A	PANZER	<input checked="" type="checkbox"/>	N	A
				AYE	<u>14</u>	NO	<u>2</u>

er #985)

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

**Public Assistance: Drug-Related Convictions and Drug Testing (Workforce Development -- Economic Support and Child Care)**

[LFB Summary: Page 695, #17]

## CURRENT LAW

No provision.

## GOVERNOR

Modify eligibility for the food stamp and Wisconsin Works (W-2) programs to include provisions relating to convictions for drug-related offenses as follows.

*Food Stamps.* Specify that an individual would be ineligible for food stamp benefits for at least 12 months from the date the person first applies for benefits if the person has been convicted after August 22, 1996, of a felony that included the possession, use or distribution of a controlled substance. Require food stamp applicants and recipients to state in writing whether they or any member of their household has been convicted of a drug-related felony. Further, require the Department of Workforce Development (DWD) to disregard the needs of the convicted individual in determining a household's eligibility for the food stamp program, but require that the income and resources of the individual be considered available to the household. Provide that an individual could regain eligibility for food stamps only if the individual submits to a drug test at least 12 months after the date the individual was first determined to be ineligible based on a drug-related conviction, and the test results are negative.

*W-2 Program.* Require individuals applying for a W-2 employment position or job access loan to state in writing whether they have been convicted of a felony that has as an element possession, use or distribution of a controlled substance.

Specify that a W-2 agency must require a participant in a community service job (CSJ) or transitional placement who was convicted after August 22, 1996, of a felony that included the possession, use or distribution of a controlled substance, to submit to a drug test as a condition of continued eligibility. If the test results are positive, require the W-2 agency to decrease the participant's pre-sanction benefit amount by up to 15% for at least 12 months, or for the remainder of the participation period if less than 12 months. Allow the full benefit amount to be restored if, at the end of 12 months, the individual is still a participant in a CSJ or transitional placement, the individual submits to another drug test and the test results are negative.

Authorize the W-2 agency to require an individual who tests positive for use of a controlled substance to participate in a drug abuse evaluation, assessment and treatment program as part of the required work hours and activities in a community service job or transitional placement.

## DISCUSSION POINTS

1. Under the 1996 federal welfare reform legislation, individuals who have been convicted of drug-related felonies after August 22, 1996, are ineligible for assistance under the food stamp program and under any state program funded with the temporary assistance to needy families (TANF) block grant. If a person has been convicted of such an offense, the family's TANF benefit must be reduced by the amount that would otherwise be available to the person who has been convicted. The household's food stamp benefit must be determined by considering the ineligible individual not to be a member of the household, except that the income and resources of the individual must be considered available to the household.

Federal law allows states to limit the period of ineligibility under this provision. In addition, federal law provides states with the option to exempt any or all individuals in the state from this requirement. If a state wishes to limit the period of ineligibility or exempt any or all individuals from this provision, it must do so by enacting a specific state law after August 22, 1996. If a state does not exempt individuals from this provision, the state must require individuals applying for assistance or benefits to state, in writing, if they or any member of their household has been convicted of a drug-related felony. The federal law does not require the drug testing of individuals.

Federal law also specifies that this provision may not be construed to deny the following federal benefits: (a) emergency medical expenses under the MA program; (b) short-term, noncash, in-kind emergency disaster relief; (c) public health assistance for immunizations or testing and

treatment of communicable diseases; (d) prenatal care; (e) job training programs; and (f) drug treatment programs.

2. Under current state law, participants in CSJs will receive a monthly grant of \$555 and transitional placements will receive a monthly grant of \$518. The maximum 15% penalty for individuals who have been convicted of a drug-related offense would be \$83 per month for CSJs and \$78 per month for transitional placements. The W-2 agency could impose a lesser penalty.

Under SB 77, the monthly cash grant would be increased to \$673 for CSJs and to \$618 for transitional placements. With these higher grants, the maximum 15% penalty for these participants would increase to \$101 and \$93, respectively.

3. Although not specified in the Governor's recommendation, the administration indicates that costs related to drug testing of recipients would be paid for out of the administrative funds for W-2 agencies. However, the administration did not identify a specific funding amount for costs related to drug testing. Because the testing would only be required for individuals who have felony drug-related convictions that occurred after August 22, 1996, it is likely that the cost of conducting the tests would not be significant in the 1997-98 biennium.

4. The Governor's proposal would provide differing treatment for persons convicted of drug-related felonies under the food stamp and W-2 programs. Convicted individuals would lose eligibility for food stamps for at least 12 months and could regain eligibility only by passing a drug test after the 12-month period has elapsed. In contrast, under W-2, a conviction would not automatically result in a benefit reduction. Instead, the individual could remain eligible for full benefits as long as he or she submitted to and passed periodic drug tests. The approach proposed for W-2 would focus more on the participant's current behavior than on a previous conviction.

5. One option that the Committee could consider would be to provide similar treatment under the food stamp program as is recommended for W-2. Under this alternative, a drug-related conviction would not automatically result in ineligibility for food stamps. Instead, eligibility would be maintained as long as the individual submitted to and passed periodic drug tests. If a recipient fails a drug test, he or she would be ineligible for food stamps for at least 12 months. It can be argued that the treatment of these two programs should be consistent, especially since nearly all participants in W-2 employment positions would also qualify for food stamps. A disadvantage of this alternative is that W-2 agencies and county departments could incur additional costs for conducting drug tests of food stamp recipients who are not W-2 participants.

6. Over time, the Governor's recommendation could result in persons being ineligible for food stamps or subject to drug testing under W-2 on the basis of convictions that occurred several years before the individual applied for assistance. This results because the provision is

based on convictions that occur after August 22, 1996, rather than on convictions that occur within some specified period before the individual applies for assistance.

As noted, the August 22, 1996, date is a general requirement of federal law. However, it appears that the federal statute allows states flexibility in determining how these provisions will be applied. Therefore, the Committee could modify the Governor's proposal to specify that ineligibility or required drug testing would be based on convictions that occur within some period of time before an individual applies for assistance rather than on convictions that occur after August 22, 1996.

7. A number of other options are available to the Committee under federal law. For example, state law could be modified to specify that the federal requirement will not apply in Wisconsin. Another alternative would be to apply the federal provision to the food stamp program but not to the W-2 program, or vice versa. Finally, the drug testing provisions could be eliminated and state law could require ineligibility for a specified period of time after the date the person is determined ineligible, such as six months, one year or some other time period. It should be noted that establishing a specific period of ineligibility under the W-2 program would create a more severe penalty than the provision recommended by the Governor.

## ALTERNATIVES TO BILL *952*

The first set of alternatives deal with the issue of what ineligibility and drug testing provisions (if any) should apply to individuals who have been convicted of drug-related felony offenses. The second set of alternatives deal with whether the ineligibility and drug testing provisions should be based on any drug-related conviction that occurs after August 22, 1996, or on convictions that occur within a certain period of time before an individual applies for assistance.

### A. Ineligibility and Drug Testing

1. Approve the Governor's recommendation to establish penalties under the food stamp and W-2 programs for individuals who have been convicted of drug-related felonies.
2. Adopt the Governor's recommendation regarding W-2 participants. Modify the Governor's recommendation regarding food stamps to require applicants to state in writing whether they or any member of their household has been convicted of a felony that has as an element possession, use or distribution of a controlled substance. Specify that DWD must require a recipient who was convicted of a drug-related felony to submit to a drug test as a condition of continued eligibility for food stamps. If the test results are positive, require DWD to disregard the needs of the convicted individual in determining a household's eligibility for the food stamp program, but require that the income and resources of the individual be considered available to

the household. Provide that an individual who fails a drug test could regain eligibility for food stamps only if the individual submits to a subsequent drug test at least 12 months after the date the individual was first determined to be ineligible, and the test results are negative.

This option would provide similar treatment under the food stamp and W-2 programs for individuals convicted of drug-related offenses.

3. Instead of the Governor's recommendation, provide that an individual would be ineligible for food stamp benefits for a specified period of time if the person has been convicted of a felony that included the possession, use or distribution of a controlled substance. Require food stamp applicants and recipients to state in writing whether they or any member of their household has been convicted of a drug-related felony. Further, require DWD to disregard the needs of the convicted individual in determining a household's eligibility for the food stamp program, but require that the income and resources of the individual be considered available to the household.

Require individuals applying for a W-2 employment position or job access loan to state in writing whether they have been convicted of a felony that has as an element possession, use or distribution of a controlled substance. If a person has been convicted of a drug-related felony, require the W-2 agency to decrease the participant's pre-sanction benefit amount by up to 15% for a specified period of time, or for the remainder of the participation period if less than the specified period.

Set the specified period of ineligibility at one of the following:

- a. Up to six months;
- b. Up to twelve months;
- c. Up to eighteen months;
- d. Up to six months for a first conviction occurring after August 22, 1996; up to twelve months for a second conviction; permanently for a third or subsequent conviction; or
- e. Some other period of time.

4. Specify in the statutes that the federal provisions relating to ineligibility due to drug-related convictions would not apply in Wisconsin for the food stamp program or the W-2 program.

5. Adopt one of the penalty provisions outlined above for either the food stamp program or W-2 program. Specify in the statutes that the federal provisions relating to ineligibility due to drug-related convictions would not apply in Wisconsin for the other program.

B.

### Applicability of Ineligibility and Drug Testing Provisions

1. Adopt the Governor's recommendation that the ineligibility and drug testing provisions for food stamps and W-2 employment positions would apply if an individual has been convicted of a drug-related felony after August 22, 1996.
2. Modify the Governor's provision to specify that the ineligibility and drug testing provisions would apply if an individual has been convicted of a drug-related felony within five years prior to applying for food stamps or a W-2 employment position, but not before August 22, 1996.
3. Modify the Governor's provision to specify that the ineligibility and drug testing provisions would apply if an individual has been convicted of a drug-related felony within some other period of time prior to applying for food stamps or a W-2 employment position, but not before August 22, 1996.

Prepared by: Rob Reinhardt

MO# ALH # AL & BZ

2 JENSEN	X	N	A
OURADA	X	N	A
HARSDORF	X	N	A
ALBERS	X	N	A
1 GARD	X	N	A
KAUFERT	X	N	A
LINTON	X	N	A
COGGS	Y	<del>N</del>	A
BURKE	X	N	A
DECKER	X	N	A
GEORGE	Y	<del>N</del>	A
JAUCH	X	N	A
WINEKE	Y	<del>N</del>	A
SHIBILSKI	X	N	A
COWLES	X	N	A
PANZER	X	N	A

AYE 13 NO 3 ABS \_\_\_\_\_

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Food Stamp Sanctions (Workforce Development -- Economic Support and Child Care)**

[LFB Summary: Page 699, #25f]

## CURRENT LAW

### **State Law**

Under current state law, the Department of Workforce Development (DWD) must administer a food stamp employment and training (FSET) program for certain food stamp recipients. Under a waiver from the federal government, the Department is permitted to distribute food stamps to recipients who are not participants in a W-2 employment position on a pay-for-performance basis. Under the pay-for-performance provisions, the amount of food stamp benefits paid in a month would be based on participation in the FSET program, as follows:

1. The recipient's total number of hours of actual participation in the prior month (including hours of nonparticipation for good cause) would be subtracted from the total number of hours of required participation in the prior month.
2. The number of hours determined above would be multiplied by the federal hourly minimum wage.
3. The dollar amount determined under (2) would be subtracted from the amount of food stamp benefits that the recipient's family would have received if the recipient had participated for the total number of assigned hours.

The maximum number of hours that an individual may be required to work may not exceed 40 hours per week.

## **Federal Law**

Under the 1996 federal welfare reform legislation (P.L. 104-193), specific sanctions are provided for individuals who fail to participate in the FSET program. The first time that an individual fails to comply with the program, the individual is ineligible for food stamps until the later of: (a) the date the individual begins to participate in the program; (b) one month after the date the individual became ineligible; or (c) a date determined by the state agency administering the program (DWD), but no later than three months after the date the individual became ineligible.

The second time that an individual fails to comply, the individual is ineligible until the later of: (a) the date the individual begins to participate; (b) three months after the date the individual becomes ineligible; or (c) a date determined by the state agency, but no later than six months after the date the individual became ineligible.

For the third or subsequent failure to comply, the individual is ineligible until the later of: (a) the date the individual begins to participate; (b) six months after the date the individual became ineligible; (c) a date determined by the state agency; or (d) at the option of the state agency, permanently.

## **GOVERNOR**

Specify that the pay-for-performance sanction for noncompliance with the FSET program would be \$4.25 per hour rather than the federal minimum wage.

Provide that an individual who fails to comply with the requirements of the FSET program without good cause is ineligible to participate in the food stamp program for one month for the first violation, three months for the second violation, and six months for the third and subsequent violations.

## **DISCUSSION POINTS**

### **Pay-for-Performance Provisions**

1. Under SB 77, if an individual fails to comply with the requirements of the FSET program, the Department would be allowed to both decrease the household's benefit amount under pay-for-performance criteria and remove the person from participation in the food stamp

program. This would permit DWD to impose a double sanction. The Department has indicated that it does not intend to impose a double sanction for nonparticipation, and that it will not implement the pay-for-performance provisions. Therefore, these provisions could be eliminated.

2. In the waiver request that was approved for the food stamp pay-for-performance provisions, the Department indicated that the hourly sanction would be \$4.25, which was the federal minimum wage at the time the request was submitted. However, under present state law, the sanction is based on the federal minimum wage, which is currently \$4.75 per hour and will increase to \$5.15 per hour on September 1, 1997. In order to correspond to the federal waiver, the Governor's recommendation would modify the statutes to specify that the hourly sanction would be \$4.25 rather than the federal minimum wage. Therefore, if the pay-for-performance provisions are retained, the Committee may wish to adopt the Governor's recommendation regarding the sanction amount.

### **New Food Stamp Sanctions**

3. The new food stamp sanctions recommended by the Governor are not entirely consistent with federal law. Federal law provides that an individual who fails to comply with the FSET program is ineligible for food stamps for a specific period of time (depending on how many violations the individual has had) or until the individual participates, whichever is later. The Governor's proposal would require ineligibility for specific periods of time, but would not specify that ineligibility would continue until the individual complies with the FSET requirements.

4. Despite this difference, the Department indicates that, in practice, the food stamp sanctions would be implemented in accordance with federal law. Therefore, in order to clarify this provision, the Committee could modify the Governor's recommendation to provide that an individual who fails to comply with the work requirements of the FSET program would be ineligible to participate in the food stamp program for the later of: (a) one month or until the person complies with the requirements for the first violation; (b) three months or until the person complies with the work requirements for the second violation; and (c) six months or until the person complies with the work requirements for the third and subsequent violations.

5. Food stamp benefits are funded entirely with federal funds. Therefore, provisions relating to sanctions for failure to comply with the FSET program work requirements would have no state fiscal effect.

ALTERNATIVES TO BILL *BASZ*

*PASS*  
A. Pay-for-Performance Provisions

1. Adopt the Governor's recommendation to limit the sanction for noncompliance with the FSET work requirement to \$4.25 per hour of work missed.
- PASS*  
2. Eliminate the food stamp pay-for-performance provisions.

*PASS*  
B. New Food Stamp Sanctions

1. Adopt the Governor's recommendation to provide that an individual who fails to comply with the FSET work requirements without good cause would be ineligible to participate in the food stamp program for one month for the first violation, three months for the second violation, and six months for the third and subsequent violations.
- PASS*  
2. Provide that an individual who fails to comply with the FSET work requirements without good cause would be ineligible to participate in the food stamp program for the later of: (a) one month or until the person complies with the requirements for the first violation; (b) three months or until the person complies with the work requirements for the second violation; and (c) six months or until the person complies with the work requirements for the third and subsequent violations.

MO# *AH # A2 & B2*

Prepared by: Joanne Simpson

ZJENSEN	<i>X</i>	N	A
OURADA	<i>X</i>	N	A
HARSDORF	<i>X</i>	N	A
ALBERS	<i>X</i>	N	A
GARD	<i>X</i>	N	A
KAUFERT	<i>X</i>	N	A
LINTON	<i>X</i>	N	A
COGGS	Y	<i>N</i>	A
BURKE	<i>X</i>	N	A
DECKER	<i>X</i>	N	A
GEORGE	Y	<i>N</i>	A
JAUCH	<i>X</i>	N	A
WINEKE	<i>X</i>	N	A
SHIBILSKI	<i>X</i>	N	A
COWLES	<i>X</i>	N	A
PANZER	<i>X</i>	N	A

AYE 14 NO 2 ABS \_\_\_\_\_