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September 8, 2000

Senator Gary George
Representative Carol Kelso
Co-Chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, WI 53702

Dear Senator George and Representative Kelso:

This submission is in response to Senator George's request for comments on the recent legislative audit of the W-2 agency Maximus.

As you know, Legal Action of Wisconsin is the federally funded legal services agency providing services to low-income persons in southeastern Wisconsin. A substantial number of the families we serve have been impacted by the W-2 program. We have spent countless hours representing clients in W-2 matters and are intimately familiar with the operation of the program. My comments are based on our experience and submitted on behalf of the families we represent.

We commend the audit bureau for its review, however, as advocates for low-income families, we feel review of the W-2 program is long overdue and must delve deeper. The W-2 agencies have been given substantial amounts of public monies to provide services and improve the opportunities available to low-income families. How and whether they accomplish this task affects the most vulnerable members of our society - children living in poverty. Yet there is virtually no documentation of how the funds are being expended and, other than gross caseload and employment numbers, what results are achieved. There is no document that you, as a legislative body, can consult to determine how many W-2 families received training, and in what fields, how many secured high school equivalency diplomas, and how many received treatment for mental health problems and /or drug or alcohol abuse issues. There is nothing that documents significant outcomes, such as the number of participants who remained employed at full-time permanent jobs for at least six months, who secured better housing, and whose children performed better in school. There is also no documentation of negative outcomes, such as the number of families losing their homes, the number who did not receive the services they needed and the number of children still living in poverty since W-2 began. There is simply no sense of whether W-2 monies are being spent effectively.

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The audit illustrates another fact. It documents, through its disturbing findings, that oversight and accountability of the W-2 agencies are virtually non-existent. The funds that were expended on advertising, on promotional items such as backpacks, and the concert mentioned in the audit report, were expended on items that were visible to the community and to DWD and its regional office. For example, Maximus widely advertised the concert, sending out posters to this office and other agencies. Why DWD failed to question these activities is not clear. Why anyone would think these activities were related to the economic success of low-income families is also far from clear.

The audit indicates that Maximus justified its advertising expenses on the need to make itself known to the community. Overlooked is the fact that Maximus was serving a captive population - cases transferred to it from the then existing AFDC program. For potentially new clients, overlooked is the fact that Maximus' main office, and the office where all new applications must be filed, is located in West Allis - a considerable distance from the majority of the population it serves. All the advertising in the world did nothing to change this fact or improve access.

The abuses identified in the audit report, the expenditures for meals, holiday parties and flowers, are inexcusable. They are even more disturbing given the purpose and structure of the W-2 program. When examined in the context of individual clients' situations and the service provided by Maximus the abuse is magnified. For example, there is the case of Donyetta, who works as an aide for Milwaukee Public Schools.¹ During the summer of 1998 Donyetta fell behind in her rent because she had not been able to secure summer employment. After being served with an eviction notice she applied for a job access loan. Maximus failed to process her request and, as a result, she was evicted from her home. In a decision reviewing this failure, a state hearing examiner found that Maximus failed to follow state rules, failed to develop expedited procedures for handling loans, and violated its contractual obligations and federal law. Yet there was no remedy available to Donyetta and no consequences to Maximus. (See Decision WWW40-38465 attached.)

Another case is that of Yolanda. Yolanda has been struggling to make ends meet with employment in fast-food restaurants. She and her five children faced eviction when her employer reduced her hours. She too requested assistance to help with her rent. Yolanda's request for a loan was not processed either, with no reason given. After this office got involved, we found there was an outstanding child support sanction which Yolanda was unaware of because the notices were sent to an old address. We contacted child support, arranged an appointment for her

¹ The names of our clients have been changed to protect their identity.

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and the sanction was lifted. We also requested that the FEP take an application for emergency assistance from Yolanda. Despite her situation he had failed to do so, indicating that he was not familiar with the program. With our assistance, Yolanda received the emergency assistance and an agreement with the landlord was negotiated to prevent her eviction. Yolanda still works, making \$5.50 an hour. If she works 40 hours a week, her gross earnings are about \$950 a month, or \$11,400 annually - less that the \$15,741 identified by the audit as being spent on parties and social events for Maximus staff. Yolanda does not have a high school diploma, she has received no further services from Maximus, nor would services be easy for her to access. She relies on public transportation, lives on the near north side, and works downtown. To make the trip to Maximus on 70th and Greenfield she would need to miss work.

Other examples involve sanctions. One client, whom we will call Tonya, was sanctioned for two months because of non-participation. At the time she was being treated for cancer and depression, her mother had also recently died. Despite these factors, the FEP and the agency fact finder refused to modify her sanctions. They were reversed by a state hearing examiner who found it was "impossible to understand why and how that assignment (for Tonya) was created". (Decision WWW40-42671 attached) The second client, Denise, was suffering from significant back problems. A state hearing examiner overturned her sanction as well, finding that the agency failed to comply with state policy and the Americans with Disabilities Act by assigning the participant to activities without any assessment or evaluation. (Decision WWW40-38513 attached)

Other examples include: Bao, a Loation refugee who speaks no English, understands English on only a limited basis, has no formal education and no job history who was found job ready; Mary, who has a significant work history but who is not now able to work because of severe depression, also found job ready; Margaret who recently left an abusive relationship, was staying in a shelter for domestic violence victims and was involved in therapy and other activities, but whose case was closed for not completing all of her W-2 activities even though her FEP was aware of her situation; Maria who moved out of the house she owned because of drug dealers in her neighborhood who were hanging around her teenager children, whose case was closed because the FEP counted the value of her house incorrectly;² Hector whose case was closed because his time limits expired but who is caring for his seriously disabled wife who, according to her physician, cannot be left alone; Tangela whose case was also closed because her time limits expired but who is suffering from significant mental health problems stemming in part from a

² He counted the fair market value instead of the equity value. It took a state hearing decision to correct this matter.

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history of abuse as a child; and Theresa who attempted to apply for W-2 in December but who was not placed in a W-2 component until March because her case was pending in another region. (See Decision WWW40-40363 attached finding this action to violate state policy and Maximus' contract but also concluding there is no remedy available to Theresa.)

The list goes on. The picture it paints is clear. In all these cases the individual was dependent on W-2 benefits and, in all these cases, Maximus failed to provide proper service. There was no penalty for Maximus' failure.

Based on the audit, and our experience, we request that this committee consider the following:

1. recommending the immediate termination of Maximus' contract with DWD;
2. requiring full and complete audits of all the W-2 agencies that are available to the public, which identify the amount of funding received, how it was expended and the outcome, if any, achieved (for example "X" amount spent for GED services for "X" period to service "X" number of persons, "X" of whom obtained their GED);
3. requiring full and complete audits of all the W-2 agencies, that are available to the public, to determine if applicants and participants are being properly served according to federal and state guidelines (the case examples above can be replicated for each and every agency we have dealt with);
and
4. establishing a system of penalties for agencies who fail to properly serve applicants and participants or misuse W-2 monies.

The consequences for a participant who fails to comply with W-2 requirements - strikes, sanctions, and becoming ineligible for time limit extensions - are harsh and unforgiving. They cannot, as Maximus has done, simply say they are sorry. The consequences for Maximus and the other W-2 agencies for failing to serve applicants and participants are none - the individual who loses her home because of agency inaction is not paid damages for the cost of relocating or the

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emotional suffering of her children, the individual who does not receive an assessment and appropriate services still exhausts her limited W-2 months and is not reimbursed later. If W-2, which is marketed as a social contact, is to have any meaning and credibility, immediate and swift action must be taken to hold the W-2 agencies accountable for their part of the contract.

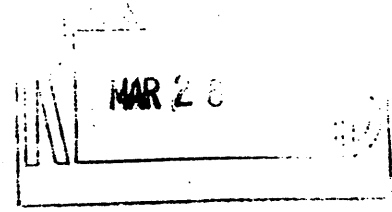
Your time and consideration of these comments is appreciated.

Very truly yours,



Patricia DeLessio
Attorney at Law

PDL/tmc
Attachments



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



Milwaukee, WI 53205

DECISION

WWW-40/38465

PRELIMINARY RECITALS

Pursuant to Wis. Stat. § 49.152(1), the petitioner filed a request for a W-2 Fact Finding review with the MAXIMUS, a W-2 agency, on December 23, 1998. A Fact Finding review was held by that agency and a Fact Finding decision was issued on January 5, 1999.

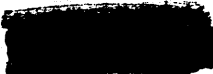
The petitioner timely appealed to the Department from the Fact Finding decision on January 27, 1999. See Wis. Stat. §49.152(2)(b), (c). The Fact Finding file was received by the Division on February 5, 1999.

The issue for determination is whether the petitioner was correctly denied a Job Access Loan.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Milwaukee, WI 53205

Petitioner's Representative:

Patricia DeLessio
Legal Action Of Wisconsin
230 West Wells Street, Room 800
Milwaukee, WI 53205

Wisconsin Department of Workforce Development
P.O. Box 7946
Madison, WI 5707-7946

By: Zena Bland
Maximus
1304 South 70th Street, Mezzanine
West Allis, WI 53214
FACT FINDER: Sonya Johnson Dodd
MAXIMUS

EXAMINER:

Kenneth P. Adler, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (S [redacted]) is a resident of Milwaukee County.

2. The petitioner applied for a Job Access Loan at the MAXIMUS W-2 agency on September 8, 1998. The request was for a \$500 loan to assist with rental payments and the petitioner indicated she needed the loan to prevent eviction. She was an employee of the Milwaukee Public School system who was not paid during the summer months.
3. The W-2 agency provided no explanation for any action or inaction on the petitioner's Job Access Loan (JAL) application. The application form presents no mention of a denial and no notification of a denial was issued to the petitioner.
4. The petitioner was subsequently evicted from her apartment on some unknown date due to the inability to meet her rental obligations.
5. On or about November 2, 1998 the petitioner completed a Special Needs Request. In response to a question on the form asking why a JAL was not appropriate, "no ability to pay back" was designed as the reason. *This is the only mention of the disposition of the JAL application.*
6. On November 6, 1998 the petitioner was issued a "special needs grant" in the amount of \$371 to assist with her rent.
7. A Fact Finding was conducted on January 5, 1999.
8. On January 7, 1999 the Fact Finder issued a decision upholding the W-2 agency action. The decision explained the W-2 agency exercises sole discretion in determining and authorizing Job Access Loans. The decision did not address the fact no notification was issued to the petitioner.

DISCUSSION

W-2 is Wisconsin's public assistance work program, and is outlined at Wis. Stat. §§ 49.141-161. It replaced the prior federal-state cash payment program, Aid to Families with Dependent Children (AFDC), described at Wis. Stat. §49.19. The petitioner disagrees with certain actions of the W-2 agency regarding its failure to process or notify her regarding her Job Access Loan application, and is not satisfied with the W-2 agency Fact Finder's decision reviewing her complaints.

I. STATUS OF FACT FINDING RECORD.

The first task of a departmental reviewer, such as this hearing examiner, is to determine whether the Fact Finding record is sufficient for review. If it is not sufficient, the examiner may remand the matter back to the Fact Finder, conduct a new hearing (either in person or telephonically), or otherwise augment the record. See Wis. Stat. §49.152(2)(d). In the instant case, the paper record is adequate for the examiner to make sense of the case, and a supplementary hearing was not necessary. The Findings of Fact above are based on the Fact Finder's decision, file and the exhibits attached to the petitioner's brief to this examiner. The W-2 agency failed to supply any tape recording of the Fact Finding.

II. STANDARD OF REVIEW.

A threshold analytical question is whether the departmental reviewer is reviewing this matter *de novo* or with some unspecified judicial standard of review. This entire due process function is subject to Wisconsin's administrative procedure act, Chapter 227, Wis. Stats., because this type of case satisfies all four prongs of the contested case hearing right test at Wis. Stat. §227.42(1). The Department has also made a public declaration that the entire review process at Wis. Stat. §49.152 is subject to Ch. 227's requirements in the document, Public Hearing Comment & Agency Response, Rule Number : DWD 12, p. 14:

The Department considers that the proceedings under paragraph DWD 12.22(2)(a) will be subject to the provisions of s. 227.44-.49, Wisconsin Stats. The Department

does not want to deny anyone the opportunity for a court hearing; however, it is expected that very few cases will lead to court.

Based on the foregoing, I conclude that the W-2 process function is subject to Ch. 227 requirements.

Having concluded that Ch. 227 applies to the W-2 process function, I must also conclude that the departmental reviewer must engage in a *de novo* look at the Fact Finder's decision. In *Reinke v. Personnel Board*, 53 Wis. 2d 123, 191 N.W.2d 833 (1971), the Wisconsin Supreme Court instructed state agency adjudicators to make *de novo* determinations, relying on the greater weight of the credible evidence, in administrative hearings. The Court specifically rejected the use of a judicial review (e.g., "substantial evidence" test) standard by the state agency, "unless expressly otherwise provided by statute." *Id.*, pp. 134-136. There is no judicial review standard articulated in either the W-2 statute or promulgated rule. The only standard articulated by the Department is that the examiner's action is "a limited review of the record and the decision of the fact finder." W-2 Policy Manual, Section IV, p.21. This is not an articulated judicial review standard, and it is not legally binding on the examiner here.

III. EXPLANATION OF A JOB ACCESS LOAN

Job Access Loans (JAL) are short-term, no interest loans designed to assist with emergency needs to support employment. The explanation of the process and circumstances surrounding these loans is detailed in state statute, administrative rule and departmental policy. See Wis. Stat. § 49.147(6), Wis. Admin. Code § DWD 12.17, W-2 Manual, section 13.1.0. W-2 agencies exercise sole discretion in determining and authorizing such loans. Wisconsin Works Manual (W-2 Manual), section 13.1.0.

An individual who meets the W-2 criteria is eligible for a JAL if the individual needs the loan to address an immediate and discrete financial crisis. Wis. Stat. § 49.147(6). Requesting assistance to help with a rental payment is specifically listed as an appropriate reason for seeking such a loan. W-2 Manual, section 13.3.0. BWI Operations Memo, 97-106.

The W-2 agency is responsible for drafting procedures which will expedite loan eligibility determinations and tailoring repayment agreements to meet an individual's specific circumstances. Wis. Admin. Code § DWD 12.17(2). Repayment may be made through in-kind services representing up to 75% of the loan amount. Wis. Stat. § 49.147(6)(b), Wis. Admin. Code § DWD 12.17(2)(d). Volunteer community work hours are given as an example of repayment in services. W-2 Manual, section 13.5.0.

Individuals who do not agree with the action taken on a JAL application may request a Fact Finding review by the W-2 agency. W-2 Manual, section 19.2.0. The person must file a written request for a Fact Finding with the W-2 agency within 45 days of the effective date of the decision. *Id.* at 19.2.1. The W-2 agency must review the case and make a final decision following the petition for review.

To clear any confusion regarding the W-2 agency's responsibilities concerning this issue, the contract between the W-2 agency and the State of Wisconsin requires the W-2 agency to administer the JAL program in conformity with the policies of the Department of Workforce Development. See Appendix N of W-2 Contract dated June 30, 1997.

IV. THE W-2 AGENCY HAS PRESENTED NO INFORMATION TO SHOW IT PROPERLY PROCESSED THE PETITIONER'S JOB ACCESS LOAN OR NOTIFIED HER OF THE DECISION TO DENY HER APPLICATION.

In this particular case the W-2 agency presented little information to explain its decision concerning the petitioner's JAL application. The only exhibit consists of the 4-page application dated September 23, 1998. The calculation page lists a variety of household expenses which are not correctly calculated and

there is a notation that "income minus expenses" results in a net budget of \$621. However, there is no way to discern *why* or even *if* the application has been denied. The "Comments" section of the application, which clearly requires the agency to "list reasons for the denial," is blank. From the evidence presented, it is simply impossible to tell whether, in fact, the loan application review was even completed.

In addition, the W-2 agency did not issue any notice to the petitioner informing her the loan application had been denied and her right to appeal that decision. Perhaps that is the reason the Fact Finding decision did not conclude her request for Fact Finding was untimely, even though filed well past the 45 day timeframe for submitting such a request.

V. THE W-2 AGENCY WRONGFULLY FAILED TO PROCESS THE JOB ACCESS LOAN APPLICATION FROM THE PETITIONER IN SEPTEMBER, 1998.

I must agree with the petitioner's representative who argues that the W-2 agency has failed to follow state rules, failed to offer loans to eligible persons, failed to develop expedited eligibility determinations and payments, and failed to provide notice of its determination and the individual's right to request a Fact Finding if she disagrees with the notification.

The petitioner was wrongfully hindered by the W-2 agency in her efforts to seek a JAL through that agency. The agency provided no evidence to rebut the petitioner's assertion that she received no notification and had no information regarding the status of her application. And, as mentioned above, the agency was not able to present any persuasive evidence that it properly processed or in fact ever denied the petitioner's JAL application.

The W-2 agency's unfair and inappropriate conduct does not violate any express provision of the Wisconsin W-2 statute or administrative code; however, it does run afoul of other authorities. Specifically, the conduct is contrary to (1) *PRWORA*'s requirement of "fair and equitable treatment," (2) the Department's contract with the W-2 agency, and (3) the Department's rather minimal policy description of what is to occur when a person requests W-2 assistance. The policy description is as follows:

W-2 is a time-limited employment assistance program. Eligible applicants may receive assistance to find employment, if unable to obtain and/or maintain unsubsidized employment. Persons have the right to complete an application for assistance and cannot be denied that opportunity. Those who are eligible for and need assistance will receive assistance. However, persons are not entitled to a cash payment or placement in a W-2 employment position as a property right under law.

W-2 Manual, 1.1.0 (1-1-98). Further, the introduction states that the W-2 agency's receptionist is to refer a W-2 applicant to a Resource Specialist "no later than the following working day," and that the Resource Specialist is to refer individuals who request a JAL to a Financial Employment Planner (FEP). *Id.* at 1.6.3.3. The FEP is responsible for determining eligibility for a JAL and is required to "[e]nsure that all data is entered into the CARES system in an accurate and timely fashion and that correct payments are issued in a timely manner." That did not occur in this case as there was no evidence the application was processed through the CARES system, and no notations concerning the denial are listed in the system except for the November notation concerning the Special Needs Request. See Finding of Fact #5.

The W-2 agency's conduct is also contrary to its contractual obligations with the Department for W-2 program administration. The June 30, 1997, contract states at Appendix N, Job Access Loans, that "[t]he W-2 agency will administer the Job Access Loan program in accordance with the Job Access Loan policy as provided in the Department's Policies and Procedures."

The "Department's Policies and Procedures" are found in the Wisconsin Administrative Code, W-2 Manual and Operations Memos. The citations to these authorities found in Section III above clearly indicate that the W-2 agency failed to follow the policy regarding the purpose for, and the reason to, providing a JAL. In addition, the explanation which was ultimately provided two months after the application was received appears to violate the directive that 75% of a JAL may be repaid through in-kind payments such as community service work.

The W-2 agency apparently did not follow the above guidelines when the petitioner sought the JAL in September, 1998. This contract violation appears to be a failure to serve the client per §17.1 of the contract. The contract language indicates that the Department views a failure to serve as a serious matter, because the contracting agency is potentially subject to a \$5,000 penalty for such a failure to serve. If the Department's contract places significance upon such a failure, a Departmental reviewer should also view violations of the performance standards pertaining to applications as a substantial matter.

Finally, the W-2 agency's unfair treatment of the petitioner's application attempt is contrary to the *PRWORA* requirement of "fair and equitable treatment" of applicants and recipients. *PRWORA* does not provide specific directions for the application process for the federal block grant programs that replaced AFDC (such as W-2). *PRWORA* states that such block grant programs are not an entitlement. *PRWORA*, §401(b). Notwithstanding the "no entitlement" language in the act, a federal district court recently enjoined New York City's welfare reform efforts which included the turning away of persons trying to apply for the federal block grant cash assistance. The *Reynolds v. Guiliani* judge stated:

Plaintiffs also have an overarching property interest in their continued receipt of food stamps, Medicaid and *cash assistance*. See Goldberg, 397 U.W. at 261-66, 90 S.Ct. at 1016-20; Dandridge v. Williams, 397 U.S. 471, 487, 90 S.Ct. 1153, 1162-63 (1970); Morel, 927 F.Supp. at 631-32. Plaintiffs' allegations concerning various practices at job centers, such as providing false or misleading information to applicants about their eligibility, arbitrarily denying benefits to eligible individuals, and failing to provide notice of hearing rights, state a viable due process claim under §1983.

(emphasis added)

When a federal judge views an agency's behavior regarding wrongful benefit denial as being serious enough that there is a probability that a federal §1983 lawsuit (based on a civil rights violation, with the winning plaintiff collecting attorney's fees and, possibly, punitive damages) could succeed, I am also inclined to view the agency's conduct here as a violation of *PRWORA*'s directive for fair and equitable treatment.

VI. THE HEARING EXAMINER/DEPARTMENTAL REVIEWER IS UNABLE TO PROVIDE A REMEDY FOR THE W-2 AGENCY'S FAILURE TO TAKE A W-2 APPLICATION FROM THE PETITIONER.

Even though the agency's conduct regarding application was incorrect, I am precluded from providing a remedy to the petitioner as the state statute is silent on providing a remedy for the wrongful denial of a JAL:

(3) REMEDIES. (a) If, following review under sub. (2), the Wisconsin works agency or the department determines that an individual, whose application for a Wisconsin works employment position was denied based on eligibility, was in fact eligible, or that the individual was placed in an inappropriate Wisconsin works employment position, the Wisconsin works agency shall

place the individual in the first available Wisconsin works employment position that is appropriate for that individual, as determined by the Wisconsin works agency or the department. An individual who is placed in a Wisconsin works employment position under this paragraph is eligible for the benefit for that position under s.49.148 beginning on the date on which the individual begins participation under s.49.147.

Wis. Stat. §49.152(3)(a). The above only speaks to employment positions, and not JALs. However, an Update of W-2 Fact Finding Remedy Process Background Paper issued on January 16, 1998 provides the following concerning a JAL denial:

If the Departmental Review decision overturns the agency's action of a denial or improper calculation of a Job Access Loan (JAL) due to an error in financial or nonfinancial eligibility determination, the agency may reexamine the JAL eligibility based on the new information.

The petitioner's representative, while admitting that the crisis which prompted the job access loan application has now passed, suggests that the W-2 be ordered to meet with the petitioner and assess her current needs to ascertain whether a job access loan may be appropriate at this time.

CONCLUSIONS OF LAW

1. The W-2 agency wrongfully failed to either to process her JAL application or provide an explanation for the denial of that September 23, 1998 application, in contravention of Department policy, its Department contract, and *PRWORA*.
2. Per Wis. Stat. §49.152(3)(a), the Departmental reviewer cannot provide the applicant petitioner with any relief for the JAL application inaction or denial.
3. The Fact Finding Decision's Conclusion that the agency correctly denied the application because the agency has sole discretion is incorrect because it is not supported by the preponderance of the credible evidence in the record.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the W-2 agency with instructions to meet with the petitioner and assess her current needs to ascertain whether a job access loan may be appropriate at this time. The meeting and assessment of her needs are to be conducted within fifteen (15) days of the date of this decision. If the application is denied at that time, the petitioner may request another Fact Finding regarding that denial.

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.

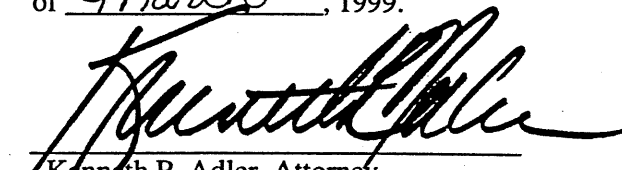
APPEAL TO COURT

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

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 24th day
of March, 1999.


Kenneth P. Adler, Attorney
Division of Hearings and Appeals
322/kpa

cc: ✓ Pat DeLessio, LAW-Milwaukee
Milwaukee Co. DHS
Maximus
Leonor Rosas DeLeon, DWD
Bill Goehring, DWD-Milwaukee
John Thiesenhusen, DES
Dave Schwarz, DHA
Lou Dunlap, DHA
Log Copy

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.



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

[REDACTED]
Milwaukee, WI 53205

WWW-40/42671

PRELIMINARY RECITALS

Pursuant to Wis. Stat. §49.152(1), petitioner filed a request for a Wisconsin Works (W-2) fact finding review with Employment Solutions, Inc., a W-2 agency. A fact finding review was held by that agency on December 3, 1999 and a fact finding decision was issued on December 10, 1999.

Petitioner timely appealed to the Department from the fact finding decision on December 23, 1999. See Wis. Stat. §49.152(2)(b), (c). The fact finding file was received by the Division on January 10, 2000.

The issue for determination is whether the W-2 agency has met its burden of supporting its decision for imposing sanctions on the petitioner for the payment months of November and December, 1999.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
Milwaukee, WI 53205

Representative:

Attorney Patricia DeLessio
Legal Action of Wisconsin
230 West Wells Street, Room 800
Milwaukee, WI 53203

Respondent:

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

By: Fred Werns, FEP
MAXIMUS
1304 South 70th Street, Mezzanine
West Allis, WI 53214

FACT FINDER: Marge Reasby

EXAMINER:

Kenneth P. Adler, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner [REDACTED] is a resident of Milwaukee County.
2. An Employability Plan printed on 08/19/99 assigned the following activities: (1) Under doctor's treatment: 25 hours/week (08/19/99 - 10/31/99); and (2) Basic Education: 15 hours/week (08/19/99 - 10/31/99).
3. Petitioner's November W-2 benefits were sanctioned for missing 62 hours: (1) 60 hours (15 hours/week) for nonparticipation in the Basic Education component; and (2) 2 hours for missing an appointment on October 11th. This resulted in a sanction of \$320.
4. On October 6, 1999 a home visit was conducted by the W-2 agency. The report from that home visit noted petitioner was not feeling very well due to recent treatments for cervical cancer. The report also stated petitioner was suffering from depression and would require assistance obtaining child care.
5. Petitioner's mother passed away on October 16, 1999.
6. The Employability Plan was updated on 11/03/99 to extend the timeframes for the activities listed on 08/19/99. The updated Plan assigned the following activities: (1) Under doctor's treatment: 25 hours/week (08/19/99 - 11/30/99); and (2) Basic Education: 15 hours/week (08/19/99 - 10/31/99).
7. On 11/12/99 the Employability Plan was again updated to include Employment Search activities.
8. Petitioner's December W-2 benefits were sanctioned for missing 90 hours: (1) 60 hours (15 hours/week) for nonparticipation in the Basic Education component; (2) a portion of doctor's care; (3) 6 hours of employment search; and (4) 4 appointments. This resulted in a sanction of \$464.
9. The Fact Finder reversed 76 hours of the 90 hour sanction of petitioner's December W-2 benefits. It is not clear to what the remaining 14 hours of sanction are related.

DISCUSSION

The issue for determination is whether the agency met its burden of supporting the sanctions it imposed upon the petitioner. Fundamental to that determination is whether the W-2 agency properly drafted and assigned the petitioner to tasks under the Employability Plan.

W-2 Transitions is a placement category used for individuals who meet the Wisconsin Works (W-2) criteria but are incapacitated or otherwise unable to perform a trial or community service job. Wis. Stat. § 49.147(5). An individual can be assigned to work activities, a treatment program and counseling or other similar activities for a maximum of 28 hours/week and educational activities for a maximum of 12 hours/week. Wis. Stat. § 49.147(5)(bs). W2-T participants are eligible for a payment of \$628 per month and sanctions may be imposed at the rate of \$5.15 per hour if an individual fails to participate without good cause.

W-2 agencies are required to assess the skills, prior work experience, and employability of an individual when determining the appropriate placement and assignment. Wis. Admin. Code s. DWD 12.15(1). The Financial Employment Planner (FEP) is required to develop the Employability Plan, in consultation with the participant, which includes the individual's placement and activities.

In addition, when an individual appeals a Fact Finding decision affecting his or her W-2 payments, the W-2 agency is responsible for adequately explaining the basis of the sanction it chose to impose. As state administrative law judges review Fact Finding decisions *de novo* the agency's failure to meet its burden at the Fact Finding may be the basis for overturning the action upon appeal of the Fact Finding.

In this particular case, the Financial Employment Planner (FEP) who drafted the petitioner's Employability Plan was not present at the Fact Finding to explain how or why the petitioner was assigned the activities which were listed in the Plan. This fact alone makes it difficult to discern whether the proper steps were taken in drafting the Plan or whether the FEP took into account the petitioner's complete circumstances as required by law in the drafting of the Plan.

In addition, there was no signed copy of the Plan in the Fact Finding file. Therefore, while the Plan was marked as an exhibit, there is no verification the petitioner was aware of the time, location or duration of her assigned activities. It is the responsibility of the W-2 agency, and not the petitioner, to confirm the participant was informed of her required participation. Based upon the above, I must conclude the agency has not met its burden of verifying it appropriately drafted the Plan or that the petitioner was adequately notified of her participation requirements under the Plan. These determinations alone persuade me the sanctions imposed cannot be upheld.

Even if I were to assume the Plan was drafted in consideration of the petitioner's various limitations and circumstances, and that the petitioner was adequately notified of the requirements of her participation, there are several other problems with the specifics of the Plan which make the imposition of the sanctions for the November and December, 1999 payments improper.

First, I can find no basis for the requirement the petitioner obtain 25 hours per week in "doctor's care." There is no explanation for this assignment, and the fact the FEP who drafted the Plan was not available at the hearing makes it impossible to understand why or how that assignment was created. Any sanction based upon such an unclear participation requirement must fail.

Second, the number of education hours assigned exceeds the 12 hours per week maximum listed at Wis. Stat. § 49.147(5). Therefore this assignment is also inappropriate.

Third, the assignment for job search is also incorrect considering the petitioner's placement in W2-T. There is no authority for requiring the petitioner to complete job search activities in order to receive the W2-T payment.

Based upon the above, I conclude the November and December sanctions based upon the above assignments must be reversed as the agency has failed to meet its burden of supporting its assignment of W-2 activities and the sanctions issued pursuant to those activities.

CONCLUSIONS OF LAW

That the sanctions imposed upon petitioner's November and December W2-T payments cannot be upheld as the agency did not meet its burden of establishing it appropriately drafted petitioner's Employability Plan and notified petitioner of her responsibilities under that Plan.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the W-2 agency with instructions to remove the November and December sanctions from the petitioner's case and issue W-2 payments of \$673 for each month within ten (10) days of the date of this decision.

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

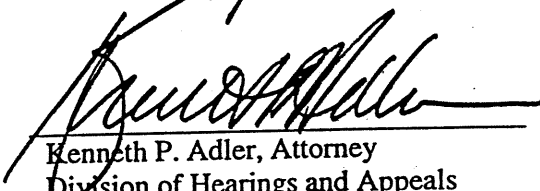
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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

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.

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.

Given under my hand at the City of
Madison, Wisconsin, this 31st day
of May, 2000.


Kenneth P. Adler, Attorney
Division of Hearings and Appeals
5261

cc: MILWAUKEE COUNTY DHS
Division Of Economic Support - Anthony Esealuka
DWD - Alice Wilkins
DWD-Milw. - Bill Goehring
DWD - Margaret McMahon
Maximus - Awilda Torres (w/attachment) ND9249
Pat DeLessio, LAW
Lou Dunlap, DHA
File copy

3-18-99
W-2 (7)(a)



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

[Redacted]
Milwaukee, WI 53219-2671

WWW-40/38513

PRELIMINARY RECITALS

Pursuant to a petition filed under Wis. Stat. § 49.152(1) (1995-96), as amended by 1997 Wis. Act 27, to review a decision by the Milwaukee County W-2 agency; Maximus. a Fact-Finding Review (W-2 Case # 06-053-98) was held on January 8, 1999 by Sonya Johnson Dodd, a Grievance Officer at Maximus. A Fact Finding decision was issued on January 12, 1999 based upon the January 8, 1999 Fact-Finding. Petitioner appealed that Fact-Finding Decision and the appeal was received by the Division of Hearings and Appeals (DHA) on February 1, 1999. The fact-finding file was received at DHA on March 4, 1999.

The issue for determination is whether the W-2 agency properly sanctioned the petitioner's W-2 benefits for the month of December, 1998

There appeared, in writing, at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Milwaukee, WI 53219-2671

Petitioner's Representative:

Attorney Karyn Rotker
Legal Action of Wisconsin
230 West Wells Street, Suite 800
Milwaukee, WI 53203

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

By: Josie Ibarra-Moreno, Financial & Employment Planner (FEP)
Maximus
1304 South 70th Street, Mezzanine
West Allis, WI 53214
By: Sonya Johnson Dodd, grievance officer

EXAMINER :

Gary M. Wolkstein, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner ([REDACTED]) is a resident of Milwaukee County who participates in the W-2 program.
2. The petitioner informed her Financial & Employment Planner (FEP), Jose Ibarra-Moreno, that she suffered from a herniated lumbar disk, probably at the L5-S1 level. Exhibits B, G & H. Due to her back problems, Ms. Moreno placed the petitioner in the W-2 transition (W-2 T) category. According to her unsigned, October 15, 1998 Employability Plan, the petitioner was assigned to work in a four-week work simulated module for 40 hours per week, beginning October 21, 1998, without any weekly contact with her FEP. See Exhibit A.
3. The W-2 agency alleged that the petitioner failed to participate in some of her assigned W-2 activities during the October 16, 1998 through November 15, 1998 participation period. However, the W-2 agency did not provide any attendance sheets or other documents to verify that the petitioner had not participated in her W-2 assigned activities during the period of October 16, 1998 through November 15, 1998.
4. FEP Moreno testified at the January 8, 1999 Fact Finding that at no time did she assign the petitioner to obtain any medical assessment or evaluation as to whether petitioner's medical problem is a barrier to employment (even though she was aware of petitioner's medical problem). Ms. Moreno did not make any accommodation to petitioner's W-2 employability plan or work assignments.
5. The W-2 agency, Maximus sent a notice to the petitioner stating her December, 1998 W-2 benefits would be fully sanctioned due to alleged failure to participate in her assigned activities during December, 1998.

DISCUSSION

The first task of a departmental reviewer, such as a Hearing Examiner, is to determine whether the Fact Finding File is adequate. If it is not adequate, the Hearing Examiner may remand the Fact Finding File back to the W-2 agency for additional information. Wis. Stat. § 49.152(2)(d) (1995-96), *as created by* 1997 Wis. Act 27; *W-2 Policy* (June 1997), IV-22. In this matter, the fact finding file clearly was adequate to review whether the W-2 agency properly reduced the petitioner's W-2 benefits for the month of December, 1998.

During the Fact-Finding, the W-2 agency contended that it correctly reduced the petitioner's December, 1998 because the petitioner allegedly failed to participate in her W-2 assigned activities during that month. In the January 12, 1999 Fact Finding decision, the grievance officer indicated that W-2 participants should be placed in full-time activity whenever possible pursuant to the Wisconsin Works Manual, 7.3.2.2, "W-2T Participation Requirements".

However, both the W-2 representative and the grievance officer neglected to mention that the W-2 agency failed to obtain a complete assessment of the petitioner's medical problem in order to evaluate petitioner's ability to participate in the W-2 program. The Wisconsin Works Manual has several sections which indicate that when a W-2 agency is aware that a participant has a problem, such as a medical condition which imposes limitation on her ability to work, that agency is obligated to obtain an assessment of

his/her condition. Section 5.3.1 provides: "Some applicants may require a more in depth or formal assessment for the FEP to determine the applicant's appropriate level of participation." In this case, the petitioner's medical condition of a herniated disc should have triggered a formal assessment of petitioner's limitations in her ability to work or need for accommodation. See also section 7.3.2.2.

In addition, the W-2 agencies must follow the guidelines set forth in the Americans with Disabilities Act (ADA). If a participant discloses a disability, reasonable accommodations must be offered. As indicated in Finding of Fact #4 above, the W-2 agency did not make any accommodation to petitioner's W-2 employability plan or W-2 work assignments.

Based upon the petitioner's testimony, Exhibits B, G & H and the Fact-Finding Decision, the record indicates that the petitioner has some level of disability regarding her herniated disk. The State of Wisconsin (and the W-2 agencies it contracts with to operate the W-2 program) are covered under the Americans with Disabilities Act (ADA). The ADA provides in pertinent part: "... no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by such entity. . . ." 42 U.S.C. sec. 12132

In the W-2 policy manual, it provides that the W-2 agencies must follow the guidelines set forth in the ADA pursuant to the W-2 Manual, Chapter 1, page 5. In her letter brief of February 1, 1999 and at the January 8, 1999 Fact-Finding, Attorney Rotker contended that the petitioner in this case is protected by the ADA as a person with a disability who meets the essential requirements of the W-2 program, is disabled and her disability affects the major life activity of "working". 28 C.F.R. sec. 35.104.

The ADA prohibits covered agencies from discriminating against person with disabilities, and requires reasonable accommodations that allow qualified disabled person to participate in the benefits of the program. In the instant case, the W-2 agency did not comply with the ADA because it failed to refer the petitioner for a formal work assessment. The ADA also requires that a W-2 agency evaluate a W-2 recipient's disability and determine what accommodations are needed to allow him or her to participate in, and enjoy the benefits of the W-2 program. The W-2 agency failed to do so. Instead, the agency simply assigned the petitioner to W-2 T (with no contact with her FEP) and without any work assessment or evaluation of the need for accommodations to the petitioner. Accordingly, the W-2 agency improperly sanctioned the petitioner's December, 1998 W-2 benefits and the Fact Finding decision is reversed.

CONCLUSIONS OF LAW

1. The W-2 agency failed to obtain any assessment or evaluation of petitioner's herniated disk in order to determine any work limitations imposed by this medical problem.
2. The W-2 agency did not determine whether the petitioner needed any accommodations to participate in the W-2 work program, despite knowing that petitioner suffered from a herniated disk.
3. The county agency did not properly sanction the petitioner's W-2 benefits for the month of December, 1998.

NOW, THEREFORE, it is

ORDERED

The matter is remanded to the W-2 agency with instructions to issue full W-2 benefits to the petitioner for the month of December, 1998, within 10 days of the issuance of this Decision.

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.

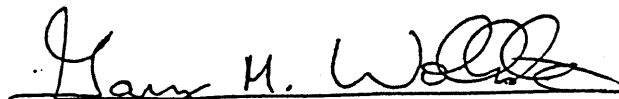
APPEAL TO COURT

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). The appeal must be served on the Wisconsin Department of Workforce Development, P.O. Box 7946, Madison, WI 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 18th
day of March, 1999.

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



Gary M. Wolkstein, Hearing Examiner
DIVISION OF HEARINGS AND APPEALS
3-17-99gmw

cc: Atty. Karyn Rotker, LAW
Milwaukee Co. DHS
Maximus
Leonor Rosas Deleon, DWD
Alice Wilkins, DES
Bill Goehring, DWD Milwaukee
Dave Schwarz, DHA
Lou Dunlap, DHA
Log Copy

7. 22. 99



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
Milwaukee, WI 53205

DECISION

WWW-40/40363

PRELIMINARY RECITALS

Pursuant to Wis. Stat. § 49.152(1) (1997-98), petitioner filed a request for a Wisconsin Works (W-2) Fact Finding review with Maximus of West Allis, Wisconsin, a W-2 agency, on May 5, 1999. A Fact Finding review was held by Maximus on May 21, 1999. A Fact Finding decision was issued dated May 27, 1999 (Review Number 06-042-99).

The petitioner timely appealed to the Department from the Fact Finding decision on June 17, 1999. See, Wis. Stat. § 49.152(2)(b) (1997-98). The complete Fact Finding file, including the audiocassette tape of the May 21, 1999 Fact Finding review, was not received by the Division of Hearings and Appeals (DHA) until July 20, 1999. The audiocassette tape of the May 21, 1999 Fact Finding review was useless because it was not audible.

The issue for determination is whether it was correct for Maximus not to accept a W-2 application from petitioner on or about December 8, 1998 because her case was "pending" in another W-2 region.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
Milwaukee, Wisconsin 53205

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

By: Chia Xiong
Alina M. L'Minggio, Resource Specialist/Transfer Coordinator
Maximus
Wisconsin Works (W-2) Agency
1304 South 70th Street
West Allis, Wisconsin 53214
FACT FINDER: Charlotte Mayfield, Maximus

EXAMINER:

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

FINDINGS OF FACT

1. Petitioner (████████████████████) is a resident of Milwaukee County.
2. On or about December 8, 1998 petitioner attempted to apply for W-2 at Maximus; at that time petitioner lived in the geographical area of Milwaukee County served by Maximus.
3. Maximus did not accept an application from petitioner for W-2 on or about December 8, 1998 because her case was "pending" with Employment Solutions, Inc., another W-2 agency serving a different region geographical area of Milwaukee County.
4. Petitioner's case was "transferred" to Maximus on March 4, 1999 and Maximus, effective that date, placed petitioner in W-2.

DISCUSSION

Any individual may apply for W-2. Wis. Stat. § 49.141(3) (1997-98); Wis. Admin. Code § DWD 12.06(1) (October 1998). An individual must apply for W-2 with the W-2 agency in the geographical area where they live. Wis. Stat. § 49.141(3); Wis. Admin. Code § DWD 12.06(2); See also, Wis. Stat. § 49.143(6).

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); Wis. Admin. Code §§ DWD 12.03(31) & 12.06(4); "Wisconsin Works Implementation Contract by and between the Department of Workforce Development and Maximus", executed June 30, 1997 & August 1, 1997, (Contract) §§ 4.2 & 19.19 and Appendix D § 1; Wisconsin Works Manual § 4.5.0 & 5.1.0 (01-01-98)

In this case, petitioner lived in the geographical area served by Maximus and, on or about December 8, 1998, attempted to apply at Maximus for W-2. Maximus did not accept an application from petitioner because it determined that petitioner's case was "pending" with Employment Solutions, Inc. This was not correct. W-2 policy is clear: Persons have the right to complete an application for assistance and cannot be denied that opportunity. Wisconsin Works Manual § 1.1.0.5. Maximus is required by law, and by contract, to follow W-2 policy. Wis. Stat. § 49.143(2)(f); Contract § 19.19 and Appendix A.

This does not, of course, mean that an individual is entitled to receive W-2 benefits from two different W-2 agencies at the same time. It means only that applications must be accepted and processed. Maximus failed to do this. In this case, if Maximus had accepted petitioner's application on or about December 8, 1998 and processed it, petitioner might have begun her W-2 participation and received W-2 benefits months earlier than she did. Maximus, however, waited until petitioner's case was "transferred" to it from Employment Solutions, Inc. before it acted. This was not correct. As discussed above, Maximus is required by law to accept applications and process them promptly.

When an individual has applied for W-2 with the W-2 agency in the geographical area where they live it but has a "pending" case elsewhere, it is not permissible for that W-2 agency to wait passively for the case

to be "transferred" from the other agency. Instead, the W-2 agency must be proactive. Even though the individual has a "pending" case with another W-2 agency the application must be accepted. The other W-2 agency should then immediately be contacted. The application and the pending case can then be consolidated. Finally, the individual must be notified, in writing, of which agency will be servicing the case.

Prudent administration dictates that the Milwaukee County W-2 agencies coordinate with one another so as to prevent a reoccurrence of the mistake which occurred here.

Despite the error made by Maximus, there is no remedy available to petitioner. 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); Wis. Admin. Code § 12.12; Wisconsin Works Manual § 4.5.1. Petitioner did not begin participation in a W-2 employment position until after Maximus finally accepted and processed her case on March 4, 1999.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct for Maximus not to accept an application from petitioner on or about December 8, 1998 even though her case was "pending" in another W-2 region.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST".

Your request must explain what mistake the 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.

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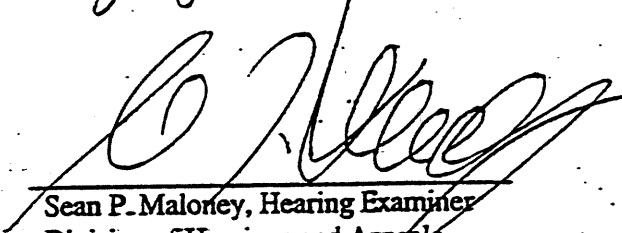
APPEAL TO COURT

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 22nd day
of July, 1999.


Sean P. Maloney, Hearing Examiner
Division of Hearings and Appeals
07201999/SPM

XCC Milwaukee Co. DHS
Maximus
Leonor Rosas DeLeon, DWD
Pat DeLessio, LAW
Anthony Esealuka, DES
Bill Goehring, DWD Milwaukee
Dave Schwarz, DHA
Lou Dunlap, DHA
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OF MADISON, WISCONSIN



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WISCONSIN OFFICE • 8033 Excelsior Drive, Suite A • Madison, Wisconsin 53717-1903 • Telephone 608/836-6666

August 1, 2000

Senator Gary George, Co-Chair
Representative Carol Kelso, Co-Chair
Joint Legislative Audit Committee
State Capitol
Madison, WI 53702

Dear Senator George and Representative Kelso:

The recent audit of the state Department of Workforce Development's contract with Maximus Corporation contained some rather troubling findings. At a time when W-2 agencies have been found to have limited low-income families' access to food stamps, Maximus staff and executives have used W-2 funds for their own extravagant meals. While many families who were diverted away from W-2 benefits were struggling to make ends meet, Maximus was treating its employees to an expensive holiday party at taxpayer expense.

With more than \$415,000 in unallowed and questionable costs, AFSCME believes DWD and Maximus have some explaining to do: Why was DWD looking the other way while Maximus was spending taxpayer money as though it were a blank check? Why was Maximus spending hundreds of thousands of dollars on publicity at the same time it was turning away the very people it proposed to serve?

in the public service

American Federation of State, County and Municipal Employees, AFL-CIO



-2-

We have repeatedly called for greater local accountability for the W-2 program in Milwaukee. This audit is just one example of the way DWD's rush to privatize this program has led to abuses by this for-profit company at the expense of the poor families it was meant to serve.

We respectfully request that your committee hold a public hearing in Milwaukee to give local citizens the chance to hear DWD and Maximus Corp. explain their use of these W-2 funds.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Beth Smith".

Beth Smith

Policy Analyst – AFSCME Council 11

cc: Members, Joint Legislative Audit Committee

MAXIMUS

Wisconsin Works (W-2) Agency
August 4, 2000

The Honorable Gary George
Co-Chair, Joint Committee on Audit
The Honorable Carol Kelso
Co-Chair, Joint Committee on Audit
Wisconsin State Legislature
State Capitol
Madison, Wisconsin 53708-8952

The Honorable Linda Stewart
Secretary, Department of Workforce Development
201 East Washington Avenue
Madison, Wisconsin 53707-7946

Dear Senator George, Representative Kelso, and Secretary Stewart:

MAXIMUS has thoroughly reviewed the contents of the Legislative Audit Bureau (LAB) report dated July 28, 2000, regarding MAXIMUS Milwaukee W-2 project. This document contains our response to the findings of the LAB and hopefully provides a framework in which to resolve the identified issues.

First, I wish to repeat my apologies for our unintentional billing errors for employee time and expenses. MAXIMUS is firm in its determination to achieve as high quality in our billing practices as we do in the services we provide, and to us even \$1 wrongly charged is unacceptable. We have already fully credited the State for these errors.

I would like to express MAXIMUS total commitment to return any and all funds to the State that were inappropriately billed or those where the justification or documentation is inadequate. MAXIMUS has made a good faith demonstration of this commitment by writing a check to the State for \$138,840. We sincerely regret the questions that have been raised about the W-2 program, because it has been a truly innovative and effective effort that has made significant gains in changing the lives of thousands of Wisconsin citizens.

It is important to note that MAXIMUS believed that innovation and creativity was encouraged when implementing this program – for us to think “outside the box.” MAXIMUS took that challenge seriously. We advertised our services widely and vigorously pursued opportunities that would reach hard-to-serve clients through our offices and job fairs. The public perception of some of these efforts has unfortunately overshadowed their success: 6,000 people were taken off welfare and placed in jobs, a great achievement in which Wisconsin taxpayers saved \$16 million.

(continued...)

August 4, 2000

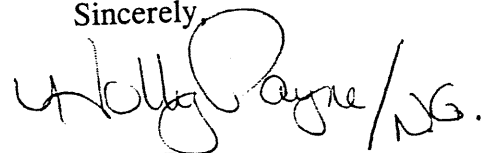
Our good intentions and good work aside, the bottom line is that in some cases the cost was excessive, including the Melba Moore motivational activity. MAXIMUS has committed to fully reimburse the State for this event, including additional charges associated with the event that were not identified in the LAB report. Nonetheless, some of the expenses cited by the Legislative Audit Bureau we strongly believe were appropriate expenditures, however we lacked sufficient documentation for the Bureau to make that determination. Some examples of expenditures we believe critical to the success of our efforts, yet lacking documentation, include: over \$8,000 for meals for our job seekers and their children while attending all day employment-related activities at our facility; over \$30,000 in outreach activities designed to engage participants into the program at the African Fest, Indian Summer Festival, Praise in the Park, and other events; over \$10,000 in miscellaneous expenses for bus tickets, towels and hygiene kits for the homeless to prepare for their job interviews, supplies for our MAXAcademy motivation classes, equipment for our facility, and training for our staff.

Where we have made mistakes, we understand that we are accountable for them. We are implementing an extensive set of corrective measures to ensure these mistakes cannot occur again - in Wisconsin or anywhere else. This Corrective Action Plan has already been transmitted to the Department and is included as an enclosure to this document. At the same time, MAXIMUS is committed to working closely with the Department of Workforce Development to determine the allowability, reasonableness, and provide additional documentation for the many expenses we believe were appropriate and enhanced the quality of our services to our job seekers.

We look forward to the opportunity to resolve these issues and continue successfully moving individuals in Wisconsin down the path from dependence upon public assistance to self-sufficiency through gainful employment. MAXIMUS performance in Milwaukee has been excellent. We believe strongly in the good that our services do, and we greatly appreciate the trust that the state of Wisconsin has placed in the professional abilities of MAXIMUS. As we work through these issues with the Department, our W-2 management and program staff are dedicated to ensuring that all of our job seekers continue to receive excellent services directed toward long-term self sufficiency. This has and continues to be our primary objective.

Please do not hesitate to call me at 703-734-4200 if you have any questions.

Sincerely,



Holly Payne
President

Welfare Reform Division

Enclosures

MAXIMUS

MAXIMUS RESPONSE TO THE WISCONSIN LEGISLATIVE AUDIT BUREAU REPORT OF JULY 28, 2000

This document contains MAXIMUS response to the findings of the Legislative Audit Bureau (LAB) report of July 28, 2000. MAXIMUS has organized its response in the same sequence as the LAB report. This paper contains the following sections:

- o MAXIMUS Work in other States,
- o MAXStaff Employment Services,
- o Personnel Practices,
- o Indirect Costs Charged to W-2,
- o Questioned Costs Charged to the W-2 Program, and
- o Improved Accounting Practices and Oversight.

Enclosure 1 - Corrective Action Plan provides the MAXIMUS plan for implementing the recommendations of the LAB and additional measures that the Company has implemented or is currently implementing to ensure that the types of errors identified in the LAB report are not repeated. MAXIMUS intends to provide a monthly status report to the Department until all corrective actions have been fully implemented.

A. MAXIMUS WORK IN OTHER STATES

MAXIMUS apologizes unreservedly for its unintentional billing errors. MAXIMUS has now credited the State for the full amount of these errors. While there have been occasions when staff erred in time and expense reporting these were unintended errors and represent 1/10 of 1 percent of the total hours billed over the three years. MAXIMUS has already implemented several corrective action measures detailed in *Enclosure 1 - Corrective Action Plan*. The Company is confident these measures will greatly reduce the potential for errors in staff time and expense reporting. MAXIMUS will cooperate fully with any sample review requested by the Department of Workforce Development.

B. MAXStaff EMPLOYMENT SERVICES

The LAB found no wrongdoing on the part of MAXIMUS in the operation of the MAXStaff Employment Services. MAXStaff was a pilot in a new and untested area of business. After careful analysis, MAXIMUS determined that MAXStaff was not financially feasible, and a business decision was made to discontinue this service as of July 31, 2000.

C. PERSONNEL PRACTICES

Two areas were reviewed based upon recent press allegations: Affirmative Action and Civil Rights Monitoring, and Related Employees.

1. Affirmative Action and Civil Rights Monitoring

The LAB notes that MAXIMUS Milwaukee W-2 operation has an approximately 70% minority staff composition. MAXIMUS has an approved Civil Rights Compliance Plan on file with the Department of Workforce Development. MAXIMUS intends to cooperate fully with any on-site monitoring conducted by the Department.

MAXIMUS has zero tolerance for discrimination. The Company investigates all complaints vigorously and takes prompt corrective action when any type of complaint is made. Training in diversity, harassment and related matters is mandatory for all employees and there is additional training for management and supervisory staff. No allegation of discrimination has ever been upheld by a court during the Company's 25-year history of operation.

MAXIMUS is cooperating fully and in a timely manner with the EEOC in the investigation and review of these complaints. Over one-third of the complaints filed with the EEOC were filed over a year ago. We will continue to vigorously seek resolution of these complaints.

2. Related Employees

MAXIMUS employs relatives of employees as a general business practice. The Company has found this to be a good method for recruiting excellent employees. MAXIMUS does not allow one family member to report directly to another family member.

The LAB confirmed that no family member reported directly to another relative. However, there were instances where a relative higher in the chain of command approved a timesheet of a relative. MAXIMUS believes this happened while the immediate supervisor was unavailable. MAXIMUS will continue to monitor its personnel practices regarding related employees to ensure a separation of activities and approvals between related employees.

D. INDIRECT COSTS CHARGED TO W-2

The LAB has determined that the indirect costs charged to W-2 appear reasonable and to have been allocated and applied consistently. Because of growth in the Company over the period of the W-2 contract, MAXIMUS indirect cost projections

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exceeded actual indirect costs. At the end of the contract period, MAXIMUS made a rate adjustment of projected indirect costs to actual indirect costs. This adjustment resulted in a \$1.4 million dollar savings to the State over the first contract period.

MAXIMUS is currently working with the Department of Workforce Development to determine a schedule for indirect rate adjustments. The LAB has recommended adjustments be made on an annual basis. MAXIMUS will reconcile indirect rates according to a schedule developed in conjunction with the Department.

E. QUESTIONED COSTS CHARGED TO THE W-2 PROGRAM

Questioned costs were divided into two categories: Questioned Transactions and Advertising. MAXIMUS has organized this section into three parts: Questioned Transactions Not Appealed, Questioned Transactions Appealed, and Advertising.

1. Questioned Costs Not Appealed

MAXIMUS apologizes and accepts responsibility for the following expenditures that were determined to be unallowable, unreasonable, or costs where sufficient documentation was not available to support the expenditure. The Company accepts the LAB determination for the following expenditures totaling \$195,343.

- o An overpayment for telephone equipment and a late charge (\$40,178)
- o MAXCLUB (our employee morale program) expenditures (\$43,717)
- o Donations or sponsorships without supporting documentation (\$14,241)
- o Family events for our participants (\$7,006)
- o Entertainment and Motivation Activities (\$23,000)
- o Flower purchases (\$1,498)
- o Meals and food without supporting documentation (\$17,358)
- o Miscellaneous program expenses without supporting documentation (\$37,925)
- o Costs miscoded (\$3,936)
- o Costs for staff planning and training (\$6,484).

It is clear from the audit that MAXIMUS W-2 needs to make improvements in the area of invoice documentation. Many of the questioned costs identified by LAB have a clear program rationale, but the accounting record simply did not have the necessary documentation to support the auditor's standard for record keeping. Where the expenditure was clearly related to the program intent but the documentation in the record was insufficient, MAXIMUS accepts responsibility for such procedural shortcoming and will reimburse the State for the questioned costs.

2. Questioned Costs Appealed

MAXIMUS looks forward to the opportunity to discuss with the Department the items that were determined unallowable or questionable by the LAB. It is the Company's belief that many of these costs are allowable under the contract and MAXIMUS is confident that the parties will agree. Federal regulation 48 CFR Part 31 and the Department's W-2 Financial Manual contain the guidelines under which particular types of expenses are allowable. After review of these federal guidelines and other supporting documentation, MAXIMUS respectfully requests that several specified transactions totaling \$219,305 be reviewed for a determination as program appropriate and allowable.

All of the types of transactions identified by LAB as unallowable or questioned are addressed in the following section. Each type of transaction and the language in federal regulation that indicates that it is allowable are detailed below.

2.1 Expenditures Identified as Unallowable

The LAB report identifies several invoices totaling \$138,840 as "unallowable" according to their interpretation of the applicable federal guidelines. MAXIMUS requests that \$13,114 be determined as programmatically appropriate and allowable. The items included in this request are:

- o **Fatherhood Summit.** MAXIMUS participated in funding (\$10,000) and had staff attendance at a "Fatherhood Summit" meeting that reviewed the best practices being used nationally and in Wisconsin in programs for non-custodial parents. The event was co-sponsored by the State of Wisconsin and included invited participation by the Governor, the Department's Secretary Stewart and the Department of Health and Family Service's Secretary Leann. The event was conducted by the Hudson Institute. It is our understanding that financial support for the meeting was also provided by at least two other W-2 agencies, and the Department provided staff support. The speakers and workshop leaders included several nationally recognized leaders in fatherhood programming. W-2 agencies and other related programs from throughout the state participated in this summit. This summit was a professional meeting discussing and disseminating important program information about non-custodial parents. This meeting was conducted with the full concurrence and participation of the Department. This activity is precisely consistent with the state W-2 philosophies and goals relating to the responsibility of both parents to care for their children.

Federal Guidelines. This expense is allowable in accordance with the following language from federal regulation 48 CFR 31.205-43(c)(1).

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The following types of costs are allowable:

When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity.

Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs.

- o **Memberships in Relevant Organizations.** The LAB report disallowed \$2,820 in memberships that MAXIMUS W-2 entered into with the Minority Chamber of Commerce, Project Equality, and the West Allis Rotary Club.

The minority chamber and the local Rotary are important sources of participating employers for job fair events and for other job leads for W-2 clients. They have helped MAXIMUS to successfully place over 6,000 persons in jobs since the initiation of the project. Project Equality is a well-respected non-profit organization in Milwaukee that has spearheaded efforts to assure equal employment opportunities in the workplace. MAXIMUS involvement in Project Equality demonstrates the Company's commitment to these goals, and allows the project to utilize their professional trainers at no additional cost for multiple in-house staff diversity training sessions.

Federal Guideline. This guidelines is allowable in accordance with the following language from federal regulation 48 CFR 31.205-43(a).

The following types of costs are allowable:

Memberships in trade, business, technical, and professional organizations.

- o **Program supplies for MAXACADEMY job motivation classes.** The LAB report describes unallowable expenses for two purchases made from Factory Card Outlet for a variety of supplies used in the W-2 program's MAXACADEMY and GED components. The cited costs were \$236 and \$42. MAXACADEMY provides a program of motivational and focused educational classes that W-2 clients attend in order to successfully seek employment. Achieving a GED status (high school graduation equivalency) is offered in conjunction with both on-site and off-site learning labs that MAXIMUS contracts from the Milwaukee Area Technical College. MAXIMUS has learned from experience that program participants need to receive positive feedback on the small milestones they achieve during this process. MAXIMUS W-2 purchases supplies ranging from classroom items to personal gift items, congratulatory cards and cakes for graduation ceremonies.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1).

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Fishing Line and Split Shot: Program Supplies.** The LAB report noted a small purchase of \$16 for fishing line and split shot supplies by the W-2 project. Fishing line and split shot are used to hang "Gold Stars" from the ceiling to recognize clients that have successfully obtained jobs through their participation in the W-2 program, and to recognize particularly noteworthy staff efforts in assisting job seeker clients. MAXIMUS feels this expenditure is an understandable and fully justifiable expense that should be reviewed by the auditors in the actual context of its use.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1).

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

2.2 Expenditures Identified as Questioned

The LAB report identifies \$276,407 of questioned costs that "in whole or in part, do not meet the standard of reasonableness, primarily because they appear to be either excessive, extraordinary, or unnecessary to agency operations or the performance of the W-2 contract." MAXIMUS requests the review of \$206,191 of these cited expenses and a determination as to program appropriateness and allowability.

2.2.1 Advertising and Public Relations Expenditures

LAB has questioned \$195,745 of Advertising and Public Relations transactions. MAXIMUS is requesting that LAB deem allowable \$183,730 in advertising and public relations activities as these were clearly outreach activities intended solely for the purpose of communicating with the public and customers.

MAXIMUS endeavored to communicate information regarding program services to customers and the public through innovative means. This was especially true during the twilight of AFDC and first year of the W-2 program, when delivering the message to the potentially eligible persons was critical to ensuring no families "fell through the cracks."

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MAXIMUS use of innovative outreach activities, recognized in the best practices guide distributed by DWD titled *Partnerships & Innovations in Welfare Reform*, provided avenues to increase client participation, built critical alliances with community and business interests, and educate the public on W-2. All of the advertising and outreach expenditures were tools to encourage job seekers to apply for services, keep them engaged in services, and to access job openings for placement and caseload reduction. Each initiative was carefully selected to ensure prudent and effective use of taxpayer funds. MAXIMUS selected events that were most likely to draw the target population and/or people influential to this group.

Advertising and public relations/outreach transactions are detailed below:

- o **Career Fair.** MAXIMUS made a \$5,500 expenditure to coordinate and promote an August 20, 1997 Career Fair job seekers and employers. Over 3,300 job seekers and 63 employers participated in the fair. The success of this event was responsible for a significant portion of the 1,000 job seekers that MAXIMUS placed prior to the actual start date of W-2. These pre-program placements realized over \$3.7 million in cash grant benefit savings to Wisconsin taxpayers.
- o **Radio Commercial.** MAXIMUS spent \$11,290 to produce and air a radio commercial explaining to job seekers how to avoid having their benefits cut and what steps to take if they receive a benefit reduction.
- o **Caseload Conversion Ad Campaign.** MAXIMUS purchased \$32,075 in goods and services related to the "Our Business is Successful Families" campaign. This campaign was used during and after caseload conversion to raise awareness of available services. At that point in time, there was a certain amount of fear and reluctance to seek services on the part of the target population. This campaign was specifically designed to portray W-2 and MAXIMUS as partners in parents' efforts to support their families. All designs were devised to be infinitely re-usable.
- o **Promotional Items.** MAXIMUS made an expenditure of \$32,260 to purchase a supply of backpacks, fanny packs, and CD cases bearing the project's local and toll-free telephone numbers. These items were distributed to job seekers and employers at job fairs, training program graduations, and community events. The rationale behind the production of these items was that customers would be more likely to retain functional items (and therefore have MAXIMUS W-2 project phone number on hand) than flyers, brochures, or business cards.
- o **Photographs.** MAXIMUS purchased all copyrights to photos of job seekers at a cost of \$2,623. This allowed MAXIMUS infinite re-use of the photos

MAXIMUS

for items such as brochures, pamphlets, and training materials. This purchase enabled MAXIMUS W-2 and the State to have a supply of realistic multi-cultural images that span a variety of economic backgrounds, something unavailable in commercial clip-art packages.

- o **Newspaper Ad.** MAXIMUS spent \$665 to purchase an advertisement in *The Shepherd Express*, which is a free weekly newspaper distributed throughout the Milwaukee metro area. The ad, which detailed resources available at MAXIMUS, was aimed at job seekers and other agencies in contact with the target population. This purchasing decision was guided by a concern for costs (advertising rates for *The Shepherd Express* are considerably lower than those for *The Milwaukee Journal-Sentinel*); familiarity with the target population (who may not be able to afford a subscription to *The Milwaukee Journal-Sentinel*); and information regarding the newspaper's readership (which tends to include persons interested in social welfare issues).
- o **Program Ad.** MAXIMUS spent \$500 to purchase a full-page advertisement with the Campaign for a Sustainable Milwaukee, a project designed to connect central city workers to family sustaining employment. Persons attending this event are able to share their knowledge of W-2 and MAXIMUS with are target population.
- o **Advertising Services.** MAXIMUS purchased a variety of advertising services from a local vendor with experience in the human service field at a cost of \$6,025. These services included production of a Year 2000 (Y2K) awareness campaign related to computer security issues. The MAXIMUS W-2 Y2K effort was thoroughly reviewed by State staff and was subsequently cited by the Department as a "Best Practice" at the 1999 W-2 Conference.
- o **Television Commercial.** MAXIMUS spent \$60,248 to produce and air a television commercial that provided information on MAXIMUS W-2 job placement services for job seekers and employers. The commercial was produced to be "evergreen," which is to say the commercial contained no information subject to change. This allowed the production expenditure to purchase a product which could be re-used an infinite number of times.
- o **Community Outreach Activities.** MAXIMUS spent \$32,544 on information booths and community outreach activities that provided opportunities to communicate with customers and the public. Community Outreach activities included:
 - the Juneteenth Day street festival,

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- Bastille Days,
- African World Festival,
- Mary Church Terrell Fatherhood Conference,
- the African-American State Fair,
- Praise in the Park,
- Community Job Fair,
- the Indian Summer Festival,
- Milwaukee Cares Day, and
- the Spirit of Truth Worship Center Women's Conference.

Federal Guideline. Federal regulation 48 CFR 31.205-1(e)(2)(ii) includes the following among allowable public relations costs.

Maintaining or promoting reciprocal understanding and favorable relations with the public at large ...include the cost of media time and space ...Costs of ...communicating with the public, press, stockholders, creditors, and customers.

2.2.2. Supermarket Gift Certificates

The LAB report included sixteen purchases of gift certificates primarily from food stores that totaled \$9,170. MAXIMUS believes that the documented \$8,220 expended on the purchase of gift certificates for food for client families who are determined in need is an appropriate W-2 program expense.

The program expenditures in this group of invoices were as follows.

- o **Supermarket Gift Certificates.** MAXIMUS spent \$2,520 to purchase a supply of supermarket gift certificates to provide to job seekers who have an urgent need for food. Hunger and access to food have been foremost in the minds of taxpayers and the press as AFDC ended and the W-2 program began. While the food stamp program and referrals to food pantries are the standard means of addressing hunger, MAXIMUS felt the need to offer an additional means of dealing with this issue. Gift certificates are stored in a safe and only issued after the job seeker's Financial Employment Planner has completed the agency's special needs paperwork. If the need for food goes unmet, job seekers are ill prepared to engage in W-2 work activities, locate employment, or retain a job. To this end, the purchase of gift certificates is an allowable expense.
- o **Supermarket Gift Certificates at Client Event.** Supermarket gift certificates totaling \$5,700 were presented to the head of the W-2 assistance group at a client event sponsored by MAXIMUS. MAXIMUS enacted controls to ensure that the party was attended by families on the Region 6 caseload only and that each head of household only received one gift

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certificate. To ensure that funding was focused only to families on our caseload, MAXIMUS employees printed the then-current CARES caseload listing, checked clients at the door for proper identification, and then matched the job seeker's name against the caseload listing. Upon receiving his or her gift certificate, the job seeker's hand was stamped so as to prevent receipt of more than one gift certificate.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

2.2.3 Meals and Related Purchases

The LAB report included the notation of numerous meal, food and related supplies purchases totaling \$22,248. This category consists of several specific types of food costs. MAXIMUS review of food expenditures indicates that \$4,890 should be allowable for the following types of food expenditures.

- o **Snacks for the Child Care Center.** MAXIMUS purchased \$132 worth of snacks for consumption by job seekers' children while in the on-site child care facility. Providing snacks for children in child care is a standard practice among child care providers. Because of the income level of the families using the center and the nature of the center (i.e. parents use it on an as-needed basis), asking parents to provide snacks is impractical.
- o **Lunches for Employers Taking Part in Job Fairs.** MAXIMUS requests that \$438 in questioned costs related to lunches provided to employers taking part in job fairs be deemed allowable. The decision to provide employers with lunch was based on a desire to make it possible for the employers to work through the lunch hour, increasing the amount of time they were accessible to job seekers. MAXIMUS was particularly interested in ensuring that employers were accessible to persons coming to the job fair on their lunch hours to look for a better job.
- o **Snacks and Meals for Clients.** \$4,320 in snacks and meals for clients attending MAXACADEMY and GED classes, graduation, or other milestone celebration events

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

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...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

2.2.4 Other Miscellaneous Program Expenditures

The LAB has questioned a number of program expenditures that were grouped into an "Other" category. MAXIMUS wishes to appeal the decision made regarding \$9,351 of the expenditures totaling \$43,559. These expenditures and the business purpose of the recommended appeal items are detailed below.

- o **Picture Framing: Program Supplies.** \$253 was used to purchase four frames to hold posters informing job seekers of their rights related to applying for and receiving food stamps. These posters are required by federal regulations. The use of frames is both a corporate standard for aesthetic purposes and a practice used to extend the life of the posters.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Resource Directories.** MAXIMUS purchased resource directories from the Milwaukee Council on Alcoholism and Drug Dependency at a cost of \$1,870. Staff utilize these directories to refer job seekers to resources and services in the community.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Office Equipment.** MAXIMUS purchased a television, VCR, and other equipment at a cost of \$1,482 for use in the MAXAcademy interviewing skill workshops. Job seekers engage in mock interviews while being videotaped, then watch the tape to review their performance. This technique is a tool used to help job seekers improve their performance, thereby increasing their chances of being placed into employment and leaving the caseload. The second VCR is used to show motivational and instructional videotapes in job seeker workshops.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

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...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Dry Cleaning.** MAXIMUS spent \$36 to dry clean table skirts and blazers worn by Customer Service staff. The table skirts are utilized in job fairs, graduations, presentations, and similar events. The blazers are worn by all Customer Service staff to assure a consistent professional appearance and an easy identification by client as they enter MAXIMUS facilities.

Federal Guideline. Federal regulation 48 CFR 31.205-24(a)(1) deems this an allowable expense as follows:

Costs necessary for the upkeep of property (including Government property, unless otherwise provided for) that neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows

Normal maintenance and repair costs are allowable.

- o **Bus Tickets.** MAXIMUS spent \$1,050 to purchase bus tickets for job seekers. The majority of persons on the Region 6 caseload do not own cars. Bus tickets are provided to job seekers to enable them to come to our office for appointments, workshops, training, and other business related to their transition from TANF dependence to self-sufficiency. Bus tickets are also provided to persons applying for employment, interviewing for jobs, or employed persons who are temporarily unable to afford bus fare. Bus tickets are stored in locked box. To receive bus tickets, a job seeker must provide a numbered, counterfeit-resistant card bearing an authorized signature. As bus tickets are used to allow job seekers to access services, secure employment, and retain a job, the purchase of bus tickets is an allowable expenditure.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Travel for Start-Up Staff.** MAXIMUS is requesting that the \$464 expenditure to fund travel expenses for a corporate employee to assist in setting up the project be allowable. This employee assisted the project team in implementing the program. Her efforts enabled MAXIMUS to quickly become operational and begin providing services to job seekers.

Federal Guideline. The following language in federal regulation 48 CFR 31.205-46(a)(1) deems travel costs allowable:

Costs incurred by contractor personnel on official company business are allowable.

- o **Expenses Related to Job Seeker Graduation Events.** MAXIMUS requests that \$1,865 in eight questioned transactions related to job seeker graduation events be deemed allowable. These transactions purchased decorations and refreshments for job seeker graduation ceremonies from the Dollar Bill and Factory Card Outlet retail stores. These expenditures were substantially related to work performed for the Department in that they were one of many strategies used to motivate job seekers to continue working towards self-sufficiency. One of the keys to motivating job seekers is constant encouragement and celebration of achievement of all milestones along the path to self-sufficiency. MAXIMUS chose to mark the achievement of completing the in-house motivational workshop series and the completion of employer-linked training programs with a celebration. As is customary with all celebrations, refreshments and decorations were a small part of the event. The event centered on speeches by successful persons in the community (who volunteered their time) and contributions from job seekers (in the form of a speech, song or poem).

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Computer Equipment.** MAXIMUS requests that \$2,151 in questioned computer equipment expenditures be deemed allowable. These items were necessary for normal business operations.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

- o **Hygiene Kits.** As MAXIMUS serves the basic need of homeless individuals on the caseload, it was determined that a variety of personal hygiene issues must be addressed. Project staff made personal donations on several occasions of soap, shampoo, toothpaste and other items. Towels and

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washcloths valued at \$180 were purchased with W-2 funding so those homeless individuals could shower. Basic needs must be met before job motivation issues can be addressed.

Federal Guideline. This expense is reasonable in accordance with Federal Regulation 48 CFR 31.201-3(b)(1)

...as ordinary and necessary for the conduct of the contractor's business or the contract performance.

3. Advertising

The LAB analysis concludes that MAXIMUS has expended more advertising funds than the other W-2 agencies in Milwaukee County. That statement is factual, and it should be expected that a higher investment in program advertising was necessary by MAXIMUS. MAXIMUS is the only agency from outside the Milwaukee community who was awarded a W-2 contract. There was no name recognition of the Company and there was no established client base similar to the other W-2 vendors. In addition the W-2 program included drastic changes from the previous AFDC system and the State was pushing for quick implementation of these large scale changes. Therefore to effectively reach the potential client population, a substantial investment in advertising was critically important to successful implementation. MAXIMUS used a variety of innovative techniques to contact and engage the client population, with notable results including the largest number of placements before the official project start date and a cumulative savings of over \$16 million due to a caseload reduction from over 4,200 to 900.

The LAB also claims that "the advertising that was purchased clearly has promotional components for MAXIMUS." To the contrary, the project has consistently advertised the availability of W-2 services for potentially eligible clients. Program engagement in W-2 was the subject of the advertising effort, and not any attempt to sell additional MAXIMUS services to other purchasers in the Milwaukee area. There was no means of surgically separating MAXIMUS from its contractually required responsibilities for implementing the W-2 program.

F. IMPROVING ACCOUNTING PRACTICES AND OVERSIGHT

One of the major areas cited by the LAB in their review of MAXIMUS expenditures was the lack of sufficient documentation. The majority of the expenditures cited for lack of documentation were small expenditures between \$5 and \$250. These expenditures were all documented as part of MAXIMUS petty cash accounting procedures. As described more fully in *Enclosure 1: Corrective Action Plan*, MAXIMUS has already begun activities to modify our petty cash accounting and

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documentation procedures. These activities include modification of all of the appropriate forms to include a detailed description of the expenditure and the purpose for the expenditure. Additional corrective action activities are documented in the enclosed plan.

The LAB also indicated that more discrete recording of expenditures is needed. MAXIMUS petty cash expenditures are grouped as one line item in our general ledger detail. The LAB would like to see expenditures more discretely accounted for according to the description of the individual expenditure. MAXIMUS is reviewing our expenditure reporting system to determine the best method for incorporating this recommendation into our accounting procedures.

MAXIMUS is taken additional steps beyond those recommended by the LAB to ensure that all of our W-2 expenditures are allowable, reasonable, and fully documented. These additional measures include improved management fiscal monitoring, training, and the assignment of an internal auditor to review W-2 expenditures. Please see *Enclosure 1: Corrective Action Plan* for a complete description of our plans for improving our internal accounting practices and oversight.

MAXIMUS intends to cooperate fully with the Department of Workforce Development to comply with any and all auditing and monitoring activities that may be requested. The Company will also incorporate any guidance or recommendations from the Department into our Corrective Action Plan.

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ENCLOSURE 1

CORRECTIVE ACTION PLAN

CORRECTIVE ACTION PLAN

In response to the recent audit conducted by the Legislative Audit Bureau, MAXIMUS W-2 has implemented an action plan designed to assist in the improvement of the areas of concern identified by LAB. The topics addressed in this action plan include proper time and expense allocation, and improved accounting practices.

Time and Expense Allocation

MAXIMUS strives to ensure appropriate billing of employee time and expenses by centralizing its payroll system, and providing direction to staff on appropriate billing. Ultimately MAXIMUS depends upon all staff to properly allocate all time and expenses. The following steps have been taken to ensure accuracy in time and expense reporting.

CORRECTIVE ACTION PLAN	Status
1. 100% quality control review of all time sheets.	1. Implemented June 2000. <ul style="list-style-type: none"> o The QC Department conducts 100% review of time sheets through the end of the calendar year. The need to continue this practice will be reassessed at that time.
2. 100% review of expense reports as compared to time sheet records.	2. Implemented June 2000. <ul style="list-style-type: none"> o Semi-annual review of expense reports as compared to time sheet records was implemented in June 2000. Next scheduled review December 2000.
3. Time allocation reminder stickers.	3. Implemented July 2000. <ul style="list-style-type: none"> o Removable stickers reminding staff to allocate time properly are now placed on all time sheets prior to distribution.
4. Release of revised Time Sheet Policy.	4. Completed July 13, 2000. <ul style="list-style-type: none"> o Time Sheet Policy was released to all staff on July 13, 2000.
5. MAXSTAR entries done only when time sheet contains all necessary signatures.	5. Completed July 13, 2000. <ul style="list-style-type: none"> o A memo instructing HRD to refrain from entering time reports into MAXSTAR if the time sheet is unsigned or does not contain the appropriate signatures was released on July 13, 2000.

6. Revised expense and travel administrative directives.

7. List of approved signatories.

8. Time card training for staff and management.

6. Completed July 20, 2000.

- o Revised Employee Expenses and Travel Advance policies were released on July 20, 2000. The original memos released April 19, 2000 were revised to include language outlining the employees responsibility for billing the appropriate project number.

7. Completed August 1, 2000.

- o Signatory Procedure was released to all staff on July 19, 2000. This memo identified the signatory procedure all staff must follow for all time and expense reports.
- o List of approved signatories developed and provided to Fiscal and Corporate completed August 1, 2000.

8. Scheduled completion August 10, 2000.

- o Mandatory training has been scheduled for August 8 and 10 for all employees.
- o Mandatory training specific for supervisor and management has been scheduled for August 4.

Accounting Practices

Many of the costs found by LAB to be unallowable or questionable were due to the lack of sufficient documentation supporting the business purpose of the transactions and description of the activity. MAXIMUS will take the following actions to improve overall accounting practices.

CORRECTIVE ACTION PLAN	Status
<p>1. Reformatting of all expense related forms including;</p> <ul style="list-style-type: none"> o Purchase Order Request, o Check Requisition Form, o Expense Pre-Authorization Form, o Travel Pre-Authorization Form, o Travel Expense Reports, o Expense Vouchers, and o Mileage Forms. <p>Revisions to be made include:</p> <ul style="list-style-type: none"> o All necessary signature lines; o Complete description of activity; o Clear identification of business purpose; and o Visual reminders of the documentation to be included in order to receive payment. 	<p>1. Implemented July 24, 2000. Scheduled date of completion August 18, 2000.</p>
<p>2. Release of Administrative Directives reflecting revision to fiscal policies and procedures.</p>	<p>2. Scheduled for release August 25, 2000.</p>
<p>3. Release of Administrative Directives outlining the required level of documentation needed for all invoices to all MAXIMUS W-2 staff.</p>	<p>3. Scheduled for release August 25, 2000.</p>
<p>4. Quarterly reconciliation of outstanding checks.</p>	<p>4. Implemented July 2000.</p>
<p>5. Revision in Accounting systems related to coding of expenses.</p>	<p>5. Scheduled for completion August 23, 2000.</p>
<p>6. Revision of Petty Cash procedures.</p>	<p>6. Scheduled for completion August 23, 2000.</p>
<p>7. Increased staffing of project Fiscal Department.</p>	<p>7. Scheduled for completion September 15, 2000.</p>

8. Revisions of MAXCLUB procedures to assure appropriate accounting for such activities.	8. Scheduled for completion September 1, 2000.
9. Allowable vs. Unallowable cost training will be scheduled and conducted for all MAXIMUS W-2 staff.	9. Scheduled date of completion September 6, 2000.
10. Revision of the quarterly Management Fiscal Review.	10. Scheduled for completion September 8, 2000.
11. Hiring of an internal auditor who will be responsible for review and evaluation of financial practices for all projects.	11. Scheduled for completion October 1, 2000.



9to5, National Association of Working Women

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■ (414) 274-0925 ■ Fax (414) 272-2870



July 31, 2000

Senator Gary George and Representative Carol Kelso
Co-Chairs of the Joint Legislative Audit Committee
State Capitol
Madison, WI 53702

Dear Senator George and Representative Kelso,

9to5, National Association of Working Women supports Senator Moore's request for a public hearing in Milwaukee as a result of the Legislative Audit Bureau's findings on Maximus. The Bureau's report, in fact, alerts the public to only part of the problem.

Enclosed is additional information about Maximus's relationship with the temp agency known as MaxStaff. The EEOC is investigating a pay discrimination charge filed by 9to5 member Tracy Jones against MaxStaff. The agency paid Tracy \$1.12 per hour less than men (trained by Tracy) doing the same job. MaxStaff argues that Tracy was part of a W-2 pilot program under which W-2 participants were paid less on the grounds that they lacked job experience and skill. Tracy was never on W-2 and in fact had extensive experience and skills. Many women on W-2 have job experience, as much as or more than many men (and women) not on W-2 who presumably were paid higher rates by Maxstaff. We feel this discriminatory practice may have been widespread. Attached are articles from the Washington Post and the New York Times that report Tracy's story.

Given the inside relationship between Maximus and MaxStaff, we wonder whether Maximus received a bonus for placing women into jobs through MaxStaff, and whether MaxStaff then received the Welfare-to-Work tax credit for hiring that same woman. There are also allegations of mistreatment of Maximus employees.

The problems with Maximus are not surprising, given the lack of oversight and accountability standards for W-2 agencies by the state. The legislative hearing will give an opportunity for elected officials to hear the impact such problems have had on the real lives of women and children.

9to5 welcomes the opportunity for women we work with to speak out about their experiences within the welfare system. Please call me at 414-274-0920 if you have any inquiries or further information on this request.

Sincerely,


Linda R. Garcia

Cc: State Senators and Representatives

Tracy Jones
Milwaukee, WI
Temp

Ms. Jones can be contacted through 9to5 at 414-274-0926

Many women earn less than men because the jobs we do pay less than the jobs men do. But even in the 21st century, some women still make less the old-fashioned way - blatant gender discrimination. That's what happened to me. And I was fired for speaking up about it.

I worked for Maxstaff, a temp agency operated by Maximus, a for-profit agency with a contract under Wisconsin's W-2 welfare reform program. I was assigned to a furniture warehouse at a wage of \$7.01 per hour. Two weeks after I began, I found out through discussions with male workers that they were hired at \$8.13 per hour for doing the exact same job. At my former job I was a union steward, so I knew this was illegal. I raised the issue with my supervisor at MaxStaff.

My supervisor told me that anyone discussing wages would be fired. So I filed a wage discrimination complaint with the EEOC. Next thing I knew, I was terminated - along with the male workers who had told me their wage rates. They may have thought that would intimidate me, but I'm not so easy to scare. I went to see a lawyer, and filed another complaint with the EEOC charging retaliatory termination.

This treatment is illegal and wrong. Women should be paid the same as men for doing the same work. If Wisconsin is going to force moms to go to work for wages, then it should see to it that we are paid our proper wages just like other workers. We're not demanding special treatment, just fair treatment.

MaxStaff claimed I was part of a pilot program for W-2 participants with little work experience. In fact, I had never been on W-2, had extensive work experience, and was never informed about any pilot project. I sent my 21-year-old nephew to apply at MaxStaff - he had no job experience, and was offered a position at the higher wage rate.

The federal government needs to investigate agencies like MaxStaff. A lot of women are worried about retaliation if they come forward. I know I'm not the only one this happened to.

I'm working with 9to5 Poverty Network Initiative to change the employment practices of temp agencies, especially those that place women leaving welfare. We need to end these kind of practices and to demand accountability from agencies that get taxpayer money and tax credits from the state.