SENATE HEARING SLIP (4)

(Please Print Plainly)

DATE: 5/19/99

BILL NO. SB 123
or
SUBJECT

Jean Rogers / Margaret McMahon
(NAME)

203 E. Washington
(Street Address or Route Number)

Madison WI
(City and Zip Code)

Dept. of Workforce Development
(Representing)

Speaking in Favor:	
Speaking Against:	✓
Registering in Favor: but not speaking:	
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP (5)

(Please Print Plainly) after Rogers

DATE: 5/19/99

BILL NO. SB 123
or
SUBJECT

Pat DeLessio / Ann Deleo
(NAME)

230 W. Wells
(Street Address or Route Number)

Milwaukee WI 53203
(City and Zip Code)

LEGAL ACTION OF WISCONSIN
(Representing)

Speaking in Favor:	X
Speaking Against:	
Registering in Favor: but not speaking:	
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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Madison, WI 53707-7882

SENATE HEARING SLIP (6)

(Please Print Plainly)

DATE: May 19, 1999

BILL NO. SB 123
or
SUBJECT Fair Hearing
Restoration ie W-2

Rev. Susan Moline Larson
(NAME)

322 E. Washington Ave.
(Street Address or Route Number)

Madison, WI 53703-2834
(City and Zip Code)

Lutheran Office for Public Policy in WI
(Representing)

Speaking in Favor:	X
Speaking Against:	
Registering in Favor: but not speaking:	
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP (1)

(Please Print Plainly)

DATE: MAY 19, 1999

BILL NO. 123 FAIR
or
SUBJECT HEARING

BARBARA KRUSE
(NAME)

1916 W POTTER
(Street Address or Route Number)

WAUWATOSA WI.
(City and Zip Code) 53226

(Representing)

Speaking in Favor: [X]

Speaking Against: [ ]

Registering in Favor:
but not speaking: [ ]

Registering Against:
but not speaking: [ ]

Speaking for information
only; Neither for nor against: [ ]

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Madison, WI 53707-7882

SENATE HEARING SLIP (3)

(Please Print Plainly)

DATE: May 19, 1999

BILL NO. SB 123
or
SUBJECT Fair Hearings

Carol A. Nedaris
(NAME)

Wis Council on Children and Families
(Street Address or Route Number)

16 No. Carroll St.
(City and Zip Code)

Madison 53703
(Representing)

Speaking in Favor: [✓]

Speaking Against: [ ]

Registering in Favor:
but not speaking: [ ]

Registering Against:
but not speaking: [ ]

Speaking for information
only; Neither for nor against: [ ]

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SENATE HEARING SLIP (2)

(Please Print Plainly)

DATE: May 19 1999

BILL NO. SB 123
or
SUBJECT FAIR HEARINGS

JOHN HUEBSCHER
(NAME)

30 W MIFFLIN
(Street Address or Route Number)

MADISON 53703
(City and Zip Code)

WI CATHOLIC CONFERENCE
(Representing)

Speaking in Favor: [X]

Speaking Against: [ ]

Registering in Favor:
but not speaking: [ ]

Registering Against:
but not speaking: [ ]

Speaking for information
only; Neither for nor against: [ ]

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Madison, WI 53707-7882

SENATE HEARING SLIP (1)

(Please Print Plainly)

DATE: 5-19-97

BILL NO. 123 / 98-119
or
SUBJECT

(NAME) N/A

(Street Address or Route Number) N/A

(City and Zip Code)

(Representing) Sen. Moore / Legis.

Speaking in Favor: X

Speaking Against:

Registering in Favor:
but not speaking: X

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: May 19

BILL NO. 123
or
SUBJECT fair hearing under W-2 Works

Kathleen Harold
(NAME)
7608 W. Grantosa Dr
(Street Address or Route Number)
Milwaukee WI 53218
(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking: X

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/19/97

BILL NO.
or
SUBJECT W2 FAIR HEARING

MICHAEL HOWDEN
(NAME)
1430 N 40 ST
(Street Address or Route Number)
MILWAUKEE 53208
(City and Zip Code)

(Representing)

Speaking in Favor: X

Speaking Against:

Registering in Favor:
but not speaking: X

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: MAY 19, 1999

BILL NO. 123
or
SUBJECT W2 FAIR HEARING

BARBARA KRUSE
(NAME)

11916 W. POTTER RD.
(Street Address or Route Number)

WAUWATOSA, WI. 53226
(City and Zip Code)

Older Women's League
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5-19-99

BILL NO. 123
or
SUBJECT W2 FAR HEARING

CAROLINE R. STAPLETON
(NAME)

7333 W. BELOIT RD #3
(Street Address or Route Number)

WEST ALLIS, WI. 53219
(City and Zip Code)

Older Womens League
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: May 19, 1999

BILL NO. 123
or
SUBJECT fair hearing for W2

Carol Seaver
(NAME)

2906 N. Marietta
(Street Address or Route Number)

Milw. WI 53211
(City and Zip Code)

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: May 19, 1999

BILL NO. SB 123

or

SUBJECT

Sally Phelps

(NAME)

310 N. McKinley St.

(Street Address or Route Number)

Madison 53703

(City and Zip Code)

League of Women Voters

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5-19-99

BILL NO. SB 123

or

SUBJECT W2 Fair Hearing Process

Grant D. Waldo

(NAME)

510 N. 20th St. #308

(Street Address or Route Number)

Milwaukee, WI 53233-2545

(City and Zip Code)

WCSC & PEC

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: Wed 19th May 1999

BILL NO. SB 123

or

SUBJECT W2 FAIR HEARING PROCESS

ROSIE CARADINE-LEWIS

(NAME)

4066 NORTH 12TH STREET

(Street Address or Route Number)

MILWAUKEE, WI. 53209-7608

(City and Zip Code)

SELF AND YOUNG MOTHERS

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 6-19-1999

BILL NO. SB 123

or

SUBJECT

Christine Shada

(NAME)

(Street Address or Route Number)

823 N 24 St Apt 305

(City and Zip Code)

Mil. Waukee 53233

(Representing)

Speaking in Favor:	
Speaking Against:	
Registering in Favor: but not speaking:	Yes
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/18/99

BILL NO. SB 123

or

SUBJECT Fair Hearing Process

David E. Nelson

(NAME)

514 N. 33rd St

(Street Address or Route Number)

Milwaukee

(City and Zip Code)

53208

(Representing)

Speaking in Favor:	
Speaking Against:	✓
Registering in Favor: but not speaking:	X
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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☒ Original ☐ Updated
☐ Corrected ☐ Supplemental

1999 Session

LRB or Bill No. -- Adm. Rule No.
SB 123 --LRB-1318/1

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

Subject
W-2, FINANCIAL ELIGIBILITY

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☒ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☒ No

☐ Decrease Costs

Local: ☐ No local government costs

1. ☒ Increase Costs
   ☐ Permissive ☒ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory

5. Types of Local Government Units Affected
   ☐ Towns ☐ Villages ☐ Cities
   ☒ Counties ☐ Others
   ☐ School Districts ☐ WTCS Districts

Fund Sources Affected:
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations:

Assumptions Used in Arriving at Fiscal Estimate

Under current law, applicants and participants in the W-2 program may petition the W-2 agency for a review of any denial, interruption, or modification of benefits or services. W-2 agencies are responsible for reviewing the petitions within a dispute resolution process. If an individual is dissatisfied with a W-2 agency's decision, he or she may ask the Department of Workforce Development to review the decision. This bill repeals the W-2 dispute resolution process and restores the Aid to Families with Dependent Children (AFDC) fair hearing process.

As under the former AFDC fair hearing process, this bill would require that benefits not be suspended if the hearing is requested by the applicant or participant in a timely fashion. Typically, the AFDC fair hearing process took about four months from the date the client requested a fair hearing until the fair hearing decision was rendered. Using this process in the W-2 program would require the W-2 agency to temporarily restore benefits pending the outcome of the hearing process. If the hearing outcome upheld the W-2 agency and a suspension, denial, or reduction of benefits, the benefits which had been temporarily restored would need to be recovered by the W-2 agency. Because the payment of cash benefits is drawn from the W-2 agency's contract with the department, the temporary restoration of benefits would also be charged against the W-2 agency's contract pending the outcome of a department administered fair hearing process. It is anticipated that recovery of benefits that have been temporarily restored would be only partially successful because the costs must be recovered through reduced future benefit payments if a case is still open, or through income tax intercept if there is an income tax refund available.

No reduction in administrative costs is anticipated for W-2 agencies, because the W-2 agency would be responsible for adjusting, restoring, and possibly recovering the benefits paid to participants. The W-2 agency would likely prepare a factual account of its decision process that precipitated the dispute and attend the hearing.

(Continued on next page...)

Long-Range Fiscal Implications

Agency/Prepared by:(Name & Phone No.)	Authorized Signature/Telephone No.	Date
DWD / Dianne Reynolds (Not Available)	267-2979	5/5/99

Assumptions Used in Arriving at Fiscal Estimate (Continued)

In state fiscal year (SFY) 1997, the department incurred nearly $700,000 in expenses for administration of AFDC fair hearings. Shortly after this period, the fair hearing process was transitioned to the current process under W-2, thus SFY 1997 represents the most reliable predictor of the costs of the proposed fair hearing process under this bill. Although the AFDC caseload declined significantly during this period, there was no corresponding decline in the number of fair hearings conducted. In light of the continued decline in caseload that took place during the first year of W-2 operations, it is assumed that the number of hearings conducted under this bill would be 50% of the number of AFDC fair hearings conducted in SFY 1997. It is estimated that the increased cost for administration of fair hearings under this bill would be $350,000.

The continuation and restoration of benefits required under this bill will have a significant fiscal impact on W-2 agencies. During SFY 1997 there were 2,930 AFDC related fair hearings. Assuming that there will be 50% of that number of hearings annually under this bill and, further assuming that one-third of the decisions made through the proposed fair hearing process uphold the W-2 agency's original decision and the participant is required to repay the restored benefits, the period of time for which benefits must be repaid is four months, and a 25% collection rate, the cost of unrecovered benefits would be $825,000. If the W-2 contracts remain fixed priced, with W-2 agencies receiving a capped amount to manage the program , these costs may reduce the amount of funding available for other services, but would not result in an increase in state costs.

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect DOA-2047(R10/94)	☒ Original ☐ Updated ☐ Corrected ☐ Supplemental	LRB or Bill No./Adm Rule No. SB 123 / LRB-1318/1	Amendment No.

Subject
W-2, FINANCIAL ELIGIBILITY

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal Impact on State funds from: Increased Costs	Decreased Costs
A. State Costs by Category State Operations - Salaries and Fringes	$0	- $0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	$350,000	- $0
Local Assistance	$0	- $0
Aids to Individuals or Organizations	$0	- $0
TOTAL State Costs by Category	$350,000	- $0
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	$0	- $0
FED	$350,000	- $0
PRO/PRS	$0	- $0
SEG/SEG-S	$0	- $0
II. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	$0	- $0
GPR Earned	$0	- $0
FED	$0	- $0
PRO/PRS	$0	- $0
SEG/SEG-S	$0	- $0
TOTAL State Revenues:	$0	- $0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
Net Change in Costs:	$350,000	$0
Net Change in Revenues:	$0	$0

Agency/Prepared by:(Name & Phone No.)	Authorized Signature/Telephone No.	Date
DWD / Dianne Reynolds (Not Available)	267-2979	5/5/99

WISCONSIN CATHOLIC CONFERENCE

June 11, 1999

Senator Judy Robson
Room 15 South
State Capitol
Madison, WI 53707-7882

Dear Senator Robson,

I am following up on your request for some specific case information from Catholic Charities in Superior to buttress my testimony in favor of the legislation to provide a fair hearing process in the Wisconsin Works program.

Attached is information provided to me by Catholic Charities of Superior on four such cases. At my request, the agency did not provide the names of the clients.

I hope you find this helpful as you continue your deliberations on SB 123. Please feel free to call me or Mr. Terry Hendrick of Catholic Charities at 715-394-6617 if you have any questions.

Sincerely,

John A. Huebscher
Executive Director

attachment

cc: Terry Hendrick

30 W. Mifflin Street • Suite 302 • Madison, WI 53703 • Tel 608/257-0004 • Fax 257-0376
E-MAIL: office@wisconsincatholic.com • WEBSITE: http://www.wisconsincatholic.com

W-2 CASE STUDY DOUGLAS COUNTY

ISSUE:
Denial of Fair Hearing in accordance with W-2 Policy Manual

BACKGROUND: Client A, a divorced mother of two minor children being treated for depression by a physician and mental health professionals, was assigned to the Catholic Charities Bureau W-2 Transition Center by a Douglas County Department of Human Services Financial Employment Planner in 1998. Client A met the criteria for service through the W-2 Transition Center as she evidenced "multiple barriers" to employment which included her mental health status, financial management issues, and, upon educational testing at the W-2 T Center, it was determined that her deficits in mathematics in comparison to other academic skills (10th grade reading level; 3rd grade math level) were symptomatic of a learning disability.

Client A had a work history as a beautician. She had been engaged in the operation of a tavern with her husband immediately prior to her divorce. After the divorce, her husband had declared bankruptcy, and as she was a partner in the business, her professional license as a beautician was negatively impacted. Her husband was nine months delinquent in child support payments at the time of her enrollment in the W-2 T program.

Client A's attendance at mandated W-2 training program activities was negatively impacted by her children's frequent illnesses and by her own medical issues. She did adapt to a more flexible schedule designed by W-2 T Center staff and was often able to "make up" mandated hours of training or work.

The County Financial Employment Planner was dissatisfied with Client A's performance and after a period of six months at the W-2 T Center transferred Client A to a worksite at the County Courthouse. During the discussions leading to this transfer, recommendations by the W-2T Center staff and by Client A that she be allowed to enroll in skill building classes at the Technical College were denied. Over the course of two months of her assignment at the County Courthouse, Client A's attendance continued to be sporadic and as a flexible schedule was not allowed at that site, she was sanctioned. Client A chose to appeal the sanction to a Fact Finding as allowed in the W-2 Policy manual. The W-2 Policy Manual (Chapter 19, paragraph 19.2.3) states "The fact finder must be neutral and provide an objective review and decision of the Fact Finding request.

The Fact Finding was conducted by the County W-2 Coordinator, who had approved the transfer to the County Courthouse worksite and disallowed the request for enrollment in Technical College remedial education classes. Client A's Financial Employment Planner (FEP) served as the primary county staff questioner of Client A at the Fact Finding. The Fact Finding process did not follow the procedures outlined in the W-2 Policy Manual. Instead of the county asserting the reasons for the sanctions and the client being allowed to answer and rebut the testimony of the county, the situation was reversed, with the county personnel questioning the client and rebutting her responses. Douglas County did not follow the procedures outlined in the Policy Manual for Fair Hearing in any respect.

OUTCOME: Douglas County Fact Finders initially upheld the sanction but after advocacy by Catholic Charities Bureau W-2T Center staff reversed their decision and suspended the sanction.

W-2 CASE STUDY DOUGLAS COUNTY

ISSUE:

Denial of Job Access Loan: No acknowledgment of receipt of request for Job Access Loan: No process followed by Douglas County to inform client or to allow any form of hearing to discuss the merits of the Job Access Loan application.

BACKGROUND: Client B is a twenty year old mother of a 10 month old child referred to Catholic Charities Bureau W-2 Transition Center by a Douglas County Department of Human Services Financial Employment Planner. Multiple barriers to employment included no work history, 3rd grade level academic skills, homeless (by federal definition), this homelessness brought on by $2,000 of unpaid utility bills in her name from an apartment she had shared with four to six other individuals, no transportation, driver's license suspended (complicated by a $200 unpaid fine for underage consumption).

With intensive counseling, which included work activities, financial counseling, (a protective payee), housing counseling and assistance with day care provided by the W-2T Center, Client B was able to met the requirements of the W-2 program. She was unable, given the cash assistance provided through W-2 to pay off her existing bills, but was able to stabilize her living conditions, have adequate day care and worked at a W-2 site near her home. She enrolled in a Certified Nursing Assistant program offered by a health care provider and she completed that training satisfactorily. As there are over 200 openings for direct care nursing assistants in this job market, she felt she was ready to "graduate from W-2".

Through W-2T Center employment counseling she set her goals on a position at a hospital where a career path was open for advancement to other positions within the organization. The hospital communicated to the W-2T Center that they were interested in the "Trial Job" option offered to employers through the W-2 program and that she was qualified to be their first employee under that program. She would have to begin in this position as a substitute on the "swing" and night shifts. Public Transportation (Bus Service) is not available during these shifts. After completing driver's training, she received assistance in the process of purchasing a used vehicle. To obtain a Driver's License Client B needed to receive a Job Access Loan which she could use to pay down her delinquent utility bill which would allow her to use her W-2 "Trial Job" payments to pay off the outstanding "underage consumption" fine and receive a driver's license. She requested a Job Access Loan through her Financial Employment Planner in April 1999.

OUTCOME: When submitting her Job Access Loan application to the Financial Employment Planner, Client B was told "Don't even think about a Job Access Loan. I rode the bus, so can you." As of June 1, 1999, Client B has not been placed in a Trial Job (or any other employment) and has received no documentation that her application for a Job Access loan was received, is under consideration or has been either approved or denied

W-2 CASE STUDY DOUGLAS COUNTY

ISSUE: Denial of W-2 Services to eligible parent

BACKGROUND: Client C is a 29 year old, homeless, divorced, mother of a disabled nine year old child, who is currently experiencing a high risk pregnancy for which bed rest has been ordered by a physician. Prior to coming to Catholic Charities Bureau for assistance to address her emergency housing issue, she had never been enrolled in either the W-2 or AFDC Program. Catholic Charities Bureau Housing Counselors immediately referred her to the Douglas County Department of Human Services Financial Employment Planner. Client C presented the FEP with documentation from her physician that she was experiencing a high risk pregnancy, that the physician had ordered bed rest and that she could not work. The Financial Employment Planner then assigned Client C to the "Work Ready" category of W-2 which resulted in Client C being ineligible for benefits. Client C also experienced considerable difficulty in having her request for Food Stamps processed.

After several months of appeals to the FEP which went unheeded, Client C received assistance from an advocate who was able to obtain for Client C enrollment in W-2. After two weeks and a partial payment, Client C (who resides over 35 miles from the county courthouse and has no reliable transportation) received a notice that her payments were suspended due to her non attendance at a mandatory meeting. Her food stamps were also eliminated. Client C maintains that she has never received a notice of this nature from the Douglas County Department of Human Services or the Department of Workforce Development.

OUTCOME: Five months after Client C's initial application to the W-2 program during which time she had received a two weeks payment, the advocate brought this case to the attention of Client C's County Supervisor. The County Supervisor met with the Department Director and the Financial Employment Planner. After direct intervention by the County Supervisor (a process not found in the W-2 Policy Manual) Client C was found eligible for W-2, the Financial Employment Planner telling Client C "you should know how this program works, you've been on AFDC" (Client C had never received AFDC, a fact retrievable through county records). As of June 4, 1999, Client has still not received a W-2 payment. She receives assistance through the Lake Nebagamon Community Association's Kids in Nebagamon Fund (a fund established to buy Christmas presents and winter boots for poor children) and Catholic Charities.

W-2 CASE STUDY DOUGLAS COUNTY

ISSUE: Denial of W-2 Services to an eligible parent.

BACKGROUND: Client D is a 33 year old divorced, homeless, mother of three children with ovarian cancer, whose sole income is $360 per month in child support, who came to Catholic Charities Bureau Housing Counseling Program seeking emergency housing assistance as she was to undergo surgery and could not maintain employment. Client D was referred to a Financial Employment Planner at the Douglas County Department of Human Services for enrollment in the W-2 program. The Financial Employment Planner told Client D that she was not eligible for the W-2 as she had worked in the past as a waitress and foster parent. The Financial Employment Planner apparently dismissed as irrelevant that Client D was undergoing surgery and would be unable to work for six to eight weeks.

The Catholic Charities Bureau housing Counselor contacted the Financial Employment Planner to clarify these issues. The Housing Counselor was informed that Client D was not eligible for W-2 because in her conversation with the FEP, she did not use the word "request". The Financial Employment Planner stated that it was Douglas County's policy to deny applicants who did not use the word "request" when "requesting" services. This dependence on the literal is apparently a component of Douglas County's "diversion strategy". The Financial Employment Planner requested that the Catholic Charities Housing Counselor not inform Client D of the need to use the word "request" when making application for services.

OUTCOME: Client D received emergency assistance from Catholic Charities, the Salvation Army, and other non profit agencies to avoid homelessness. After two months of intervention, and a physicians diagnosis of mental illness, Client D was approved for W-2. She was informed by Catholic Charities to use the word "request" when making application.

INTERFAITH CONFERENCE OF GREATER MILWAUKEE

Founded 1970

1442 N. Farwell Ave., Suite 200
Milwaukee, WI 53202
414/276-9050
Fax 276-8442
email: ifcgm@aol.com

May 13, 1999

Senate Committee on Human Services and Aging
Wisconsin State Senate
Madison, Wisconsin

Dear Senators:

Thank you for including Senate Bill 123 (relating to the fair hearing process under Wisconsin Works) among the issues that you are considering.

Since the planning stages of W-2 the Interfaith Conference has supported the maintenance of a fair hearing process that 1) allows benefits to continue pending a decision regarding the grievance that is being heard; 2) provides for retroactive benefits if an improper decision by the agency/county/state led to the denial of benefits; and 3) includes a component that obligates the W-2 agency to correct the error in a timely manner

We base this position on the belief that all persons should be treated with the same dignity, respect, and level of fairness that anyone else would expect.

Furthermore, our experience working with church-based overflow shelter during the past three winters has put us in contact with many people who became homeless because they lost income due to problems with W-2. We believe that a real fair hearing process would quickly correct problems and thereby avoid loss of income and eviction.

Again, thank you for taking up this important issue.

Sincerely,

Jack Murtaugh
Executive Director

FAX COVER SHEET

Urban Day School
3774 N. 12th Street
Milwaukee, WI 53206
(Phone) 414-263-0809
(Fax) 414-263-5577

SEND TO Company name: Senate Human Services & Aging Com	From: Women and Poverty Jean Ueber, Coord.
Attention: Senator Robson (C)	Date: 5/18/99
Office location: Madison	Office location: 3782 N. 12 - Mil.
Fax number: 608-266-7038	Phone number: 414-265-3925

☒ Urgent ☐ Reply ASAP ☐ Please comment ☐ Please review ☐ For your information

Total pages, including cover: 2

COMMENTS

For May 19 Committee (HS & aging) meeting. Please Copy to each Committee member.

Thank you. Jean Ueber

WOMEN AND POVERTY
PUBLIC EDUCATION INITIATIVE
3782 North 12th Street
Milwaukee, WI 53206
(414) 265-3925

May 18, 1999

TO: Members of the Senate Human Services & Aging Committee: Senators Robson, Moore, Plache, Wirch, Roessler, Rosenzweig, Darling

FROM: Jean Verber Anne Hazelwood, Coordinators

RE: SB 123

We are aware that the Fair Hearing bill (SB 123) will come before your Committee tomorrow, May 19.

We are writing on behalf of the hundreds of women we have been in contact with on W-2 who have or could benefit from the fair hearing process.

Not only does the fair hearing provide an objective third party to review my complaint, but it guarantees retention of cash benefits until a decision is rendered (unlike the current department reviews).

With the prevailing job ready determinations, the high level of sanctions, and other concerns of W-2 participants, return of the fair hearing process can restore a measure of hope to persons needing resolution to problems in a fair and timely manner.

We urge your support of SB 123.

Judith B. Robson

Wisconsin State Senator

CHAIR, HUMAN SERVICES AND AGING COMMITTEE

May 17, 1999

Attorney Robert J. Anderson
Legal Action of Wisconsin
31 South Mills
Madison, WI 53715

Dear Attorney Anderson:

I would appreciate it if you and your office could provide me with whatever information and assistance you may have to offer to the Senate Human Services and Aging Committee on SB 123, relating to the fair hearing process under W-2.

Sincerely,

Judith B. Robson
State Senator
15th Senate District

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253
District Address: 2411 East Ridge Road, Beloit, WI 53511
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

Vote Record

Senate - Committee on Human Services and Aging

Date: 1/18/00
Moved by: Moore
Seconded by: Rosenzweig
Clearinghouse Rule:
Appointment:
Other:

AB: SB:
AJR: SJR:
AR: SR:

A/S Amdt:
A/S Amdt: to A/S Amdt:
A/S Sub Amdt: LRBs0164/1 to SB 123
A/S Amdt: to A/S Sub Amdt:
A/S Amdt: to A/S Amdt: to A/S Sub Amdt:

Be recommended for:
- ☐ Passage
- ☐ Introduction
- ☒ Adoption
- ☐ Rejection

- ☐ Indefinite Postponement
- ☐ Tabling
- ☐ Concurrence
- ☐ Nonconcurrence
- ☐ Confirmation

introduction

Committee Member	Aye	No	Absent	Not Voting
Sen. Judy Robson, Chair	☒	☐	☐	☐
Sen. Gwendolynne Moore	☒	☐	☐	☐
Sen. Robert Wirch	☒	☐	☐	☐
Sen. Carol Roessler	☐	☒	☐	☐
Sen. Peggy Rosenzweig	☒	☐	☐	☐
Totals:	4	1		

adoption

Moore Robsen

Aye X

X
X
X
X
X

passage

X
X
X
X
X

☒ Motion Carried ☐ Motion Failed

WISCONSIN COUNCIL ON CHILDREN and FAMILIES

"For these are all our children . . . we will all profit by, or pay for, whatever they become." James Baldwin

SENATE COMMITTEE ON HUMAN SERVICES AND AGING

Testimony on SB 123: W-2 Fair Hearing Process
Carol W. Medaris, Project Attorney

May 19, 1999

I am appearing on behalf of the Wisconsin Council on Children and Families in support of SB 123, and the proposed amendment. It is the opinion of the Council that this bill would provide a more fair and consistent safety net for Wisconsin's low-income working families, whether they are working in unsubsidized jobs and receiving W-2 child care benefits or working in W-2 subsidized jobs.

The bill makes three basic changes to the current system. First, it would restore the fair hearing process to the state-level Division of Hearings and Appeals (DHA), so that procedures for W-2 cases would be the same as those for all food stamps and medical assistance cases.

Second, when participants already in W-2 work programs or receiving child care assistance are notified that their benefits are due to end or be reduced, and they believe that decision is wrong and file a timely appeal, they would be eligible to continue to receive benefits at their current level until a decision is made following a fair hearing. Again, this is the same procedure as occurs now with food stamps and medical assistance.

Finally, the amendment would provide for retroactive benefits in cases where a hearing decision finds that an applicant was denied a W-2 work placement based upon eligibility when the applicant was in fact eligible, or that an individual was placed in an inappropriate W-2 work position. Currently retroactive benefits are authorized in all W-2 cases but these.

STATE LEVEL FAIR HEARINGS.

The current W-2 review process involves two steps: a hearing at the local W-2 agency and then a review by the DHA. The second step is not automatic, however. State statutes provide that the only time the second review must be provided is if the issue involves someone denied assistance because of financial ineligibility. In practice, the Department of Workforce Development (the Department) has provided for DHA hearings in all cases upon request, but that

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www.wccf.org

practice could change at any time. (Financial eligibility is only a small part of the eligibility process. Currently there are 23 "non-financial" eligibility requirements in state statutes and 4 additional requirements in administrative rules.)

SB 123 would change the two-step process to a one-step review at the DHA, which is all that is necessary. The DHA provides an independent review consistent with due process by hearing officers familiar with all relevant programs and the law governing them. Few would argue that a hearing conducted by someone employed by the same agency making the initial decision is likely to be as unbiased as a state-level hearing officer who is totally separate from that local agency. Local agency personnel are also unlikely to be as familiar with the statutes and regulations governing the program as DHA hearing officers.

Such a process does not mean that the local agency cannot review its own decision in an informal manner prior to the hearing. In my experience as a legal services attorney, many cases were settled following a hearing request, after the county agency worker reviewed their file, talked with the participant or an advocate, and perhaps discussed the case with a supervisor. (Sometimes the settlement was in favor of the county, sometimes in favor of the participant, and sometimes it involved a compromise of the issues.)

CONTINUING BENEFITS.

As indicated above, benefits would be continued only in cases where persons are already participating in W-2 and their benefits are due to be reduced or terminated. Continuing benefits cannot apply to persons who are only applying for benefits. Continuing benefits are also not indicated if the issue concerns a challenge to state or federal law. For example, a person could not challenge a termination because the person's income exceeded the limits established in the statute. He or she could appeal if it was felt that certain income was being counted incorrectly.

Benefits would be continued up until a hearing decision which found in the county agency's favor, at which point benefits would end (or be reduced) and the W-2 agency would be entitled to collect the overpaid benefits. The Department estimates that a decision would occur in the W-2 agency's favor in about one-third of the cases appealed, fiscal note at page 2.

That estimate is very significant. One may anticipate that for two-thirds of those appealing their cases, continuing benefits simply means that they will be continued at the level they are due. Put another way, under the current system in which continuing benefits are denied, two-thirds of families appealing their

cases will be denied benefits they are due until after a decision following their agency review.

The only argument on the other side is cost: the cost of providing continuing benefits to about one-third of those appealing who are unsuccessful, less the amount of money which can be recovered out of either future benefits, tax interception, or court action. The fiscal analyst indicates that the figures are speculative. I would suggest that the collection rate (estimated to be 25%) is probably low, considering that under the new system most people will be working and thus have tax returns available for interception.

On balance, it would seem appropriate to opt for a system that continued benefits for two-thirds of those appealing their cases, rather than one which opted to deny those benefits. For families on W-2 work programs, their cash assistance may be the only thing keeping them going. For workers dependent upon W-2 child care, continuation of their benefits may be the only thing enabling them to keep their job.

The Department's estimate of a two-thirds success rate for those appealing their cases is important for another reason. It is very good evidence that appeals are not being pursued for frivolous reasons.

RETROACTIVE BENEFITS.

Current law provides that if the W-2 agency or the DHA hearing examiner finds that a participant's benefit was improperly modified or canceled, or was calculated incorrectly, the benefit shall be restored back to the date the mistake was first made. The exception to this rule applies in cases involving a denial of a W-2 work program placement or an improper placement. In the latter cases, the only remedy is to place the participant in the "first available" work program that is appropriate.

This means that there is no remedy for work program benefits that were denied in error -- which may mean several months of severe hardship for a family. On the other hand, it means that W-2 agencies may ignore repeated requests for help until after a hearing and a decision ordering placement in a work program. There are no consequences for the W-2 agency and thus no incentive to make sure that benefits are properly provided. In fact money has been saved by the delay in benefits, however improper the action.

In all fairness, retroactive benefits should be provided in these cases as it is in other W-2 cases where the agency makes an error and participants are denied benefits for which they are eligible.

A FAIRER SYSTEM.

When hearings are held at the state level, it is likely to result in a fairer system state-wide. It is important that basic eligibility rules be interpreted the same way in the various counties. For example, one eligibility rule requires that applicants cooperate with establishment of paternity and child support collection. It would be unfair if cooperation with the child support office were interpreted differently depending upon which county one happened to live in.

State-wide fair hearings are also important so that the program is run consistent with the intent of the state law. In the past, when the DHA issued a decision settling a policy point, that decision usually resulted in changes made across the state. Under the current, county by county system, a decision in one county is unlikely to have any effect in another. For example, lack of transportation is not listed as good cause for failure to miss a work activity, and yet one who missed work because of a breakdown in transportation clearly should not be sanctioned. The Department's rules define good cause as a required court appearance, lack of necessary child care or "other circumstances beyond the control of the participant, but only as determined by the FEP." DWD 12.20(3), W.A.C. A hearing is likely to resolve such an issue in favor of the client. But should this issue have to go to a hearing in every county where the issue comes up? Clearly that will penalize participants unnecessarily while their cases are being resolved.

This is still a developing program where local agencies are given a great deal of discretion under the law. Mistakes are going to be made. In order to prevent recipients bearing all the burden of the mistakes and for longer than need be, we need to find out where mistakes are being made and clarify policy in a systematic way. That can best be done with a fair hearing system at the state level.

TESTIMONY ON SB 123
RESTORING A FAIR HEARING PROCESS UNDER THE W-2 PROGRAM

Senate Human Services and Aging Committee

May 19, 1999

Good morning, Chairperson Robson and committee members. I am Jean Rogers, from the Division of Economic Support, Department of Workforce Development. With me today is Margaret McMahon, a Program and Planning Analyst in the Bureau of Welfare Initiatives.

Senate Bill 123 would repeal our current Wisconsin Works (W-2) dispute resolution process and recreate the old fair hearing process. The old process was the cornerstone of what made cash assistance under Aid to Families with Dependent Children (AFDC) an entitlement. The Department is testifying in opposition to Senate Bill 123 because it is inconsistent with the expedited processes in use under W-2, without correcting any known problems with the W-2 dispute resolution process.

There is no evidence that the W-2 dispute resolution process is unfair. We believe that the changes proposed would have unintended adverse consequences.

Consequences

SB123 would weaken the work-first philosophy of W-2 and could serve as an incentive for dispute. While the W-2 dispute resolution process accommodates resolution of disputes speedily and in the way that they would be resolved in the real work world. It lets the parties to the disagreement have the first try at resolution, and, only if they can't, does an independent review become necessary. This Bill would take any dispute directly to a formal hearing level without requiring the two parties affected to make immediate effort to reach resolution.

Generally, a person is not entitled to wages pending a "fair hearing" for days they did not work, but they would be under this bill. Our past experience under AFDC tells us that many fair hearings are solely the result of this financial incentive.

A basic tenet of the W-2 program is to provide a significant amount of autonomy and responsibility to the local agencies in order that they can be most effective in helping W-2 families. Local agencies are most likely to the personal relationships and knowledge of family circumstances to be in the best position to make an accurate assessment of a situation that prompted a fact finding process. Our fact finding process currently allows local collaboration between the petitioner, the independent fact finder and, the FEP to informally resolve issues that may be affecting participation or eligibility. To reinstate the fair hearing process would put local agencies in a position where they would have little or no incentive to take responsibility to find out what the dispute is about and to take corrective action to address the petitioner's problem. Just as was true in the old days of AFDC, there would be no incentive or requirement for the W-2 agency to immediately address the issues causing the participant's concern.

Restoration of the fair hearing process would also create an unnecessary delay in the decision-making process. This delay would then have the potential to alienate participants from the agency and indeed the program that is trying to help them while they are waiting for resolution. As the experts tell us with raising children, "just wait til Dad gets home" is not a good idea. A decision is more readily accepted, regardless of the outcome, if the decision is made in an expedient manner. A fact finding review as conducted by the agency is just that – an expedient process that prevents participants from feeling as though they have been lost in the shuffle. From the date a request is made, the agency must make a decision within five days and even Departmental reviews are completed within two weeks. The average amount of time a fair hearing takes is four months. This delay can create a feeling of alienation as well as place an individual under undo financial hardship.

For example, if a person was put in an incorrect placement, such as a W-2 T when they should have been in a CSJ, it would take four months for the person to be reassigned in the correct placement for the higher benefit amount. Worse yet, if an applicant is found ineligible for W-2 or eligible for case management services only. Although this bill calls for

continued benefits, if an applicant had never been determined W-2 eligible and assessed for placement on the W-2 ladder, there would be no benefits to continue. It would take at least four months until the person could be assessed, placed on the appropriate rung of the ladder and receive cash assistance. Also, under a fair hearing process, since appeals would take longer to resolve, a participant is likely to experience delay in receiving the supportive services, such as domestic abuse counseling, that might resolve the issues causing a failure to participate.

Additionally, financial consequences to the taxpayer can stem from the legislation's mandate that petitions cannot have their benefits suspended, reduced or discontinued until after a fair hearing decision has been made.. If it is found that the agency's decision was correct, the agency's recovery options on behalf of the taxpayer are limited to reduction of future benefits or tax intercept (neither of which has been proven very effective).

Additionally, this bill reduces the Department's ability to combat program fraud and abuse. If, for example, the agency has evidence and reason to believe that a person receiving benefits lives in another state or fails to declare income, the Department has no recourse to discontinue those benefits until after a fair hearing is held under this bill. This would create two injustices: First, a person would have received W-2 benefits that should not have; and, second, resources would have been diverted from genuinely eligible **Wisconsin** residents.

Statistics Showing Success
On the other hand, the W-2 dispute process currently allows and indeed encourages local collaboration between the petitioner and the agency to informally resolve issues that may be affecting participation or eligibility even before the Fact Finding process. Our statistics show that this is often the case.

In the first quarter of this year, approximately 30 issues were resolved prior to the matter going to a fact finding. Of the approximately 88 fact findings that were conducted statewide, 37 were decided in favor of the agency and 51 were decided in favor of the participant. Clear indication is that the Fact Finder is remaining independent of the agency in their decision making.

Since September 1997, when W-2 began, the Department has received 128 requests for a Departmental level review of a W-2 agency's decision.

Oversight
One of the reasons given for SB 123 was a concern that agencies may have a financial reason to withhold benefits. Under the current process, there is no incentive for the agency to delay the decision-making process. In fact, there are a number of disincentives, here are a few:

- The adverse affect on the performance bonus structure being introduced under the new W-2 contract;
- The financial penalties an agency can incur from failing to serve participants; and
- The negative public impact of an agency knowingly and willingly delaying the process, in other words, sheer embarrassment.

Rather, under the current fact finding process, either the agency or the petitioner may request that the Department review the agency decision and the Department has made a policy decision to grant every request for review of a fact finding decision. This decision was made to help in state monitoring of the fact finding process and to give local agencies and participants an informal arena where they can request further guidance from the state on fact finding issues.

In summary all evidence indicates that the current dispute process under W-2 is working fairly and is working quickly. To change it at this point would be detrimental to the very existence of the W-2 program without improving the process of dispute resolution. Equally important, if not more important, is the fact that repeal of the current W-2 dispute resolution process would also be detrimental to the interests of both the people currently receiving W-2 services as well as those who are applying for W-2 services. And, I believe that to revert to a fair hearing process would be inconsistent with the intent of Wisconsin's W-2 legislation as well as Federal law. It would limit the ability of the local agencies to informally and quickly address a participant's needs and concerns and would move the philosophy of W-2 backward in terms of promoting individual responsibility and making best use of time limited benefits to address barriers to employment.

Thank you all, we would be happy to respond to questions you may have.

WISCONSIN CATHOLIC CONFERENCE

TESTIMONY IN SUPPORT OF SENATE BILL 123
(Fair Hearings process Under Wisconsin Works)
Presented by John Huebscher, Executive Director
May 19, 1999

On behalf of the Wisconsin Catholic Conference, the public policy voice of Wisconsin's Roman Catholic bishops, I speak in support of this bill to create a fair hearing process for families adversely affected by decisions of county W-2 agencies.

This bill should be enacted for several reasons.

First, we are talking about decisions with serious consequences. The benefits provided by W-2, be they in the form of grants or other supportive services, are essential to a family's survival. Hence a decision to deny or suspend assistance has serious effects. Since most of those affected by W-2 will be children, these decisions are especially critical. An adequate review process is essential to maintaining the justice of the system.

Secondly, there must be consistency of treatment for families in W-2, wherever they may live. The local flexibility given agencies to provide "family specific" case management services is a strength of W-2. But there must be some common standard for determining eligibility and compliance with program requirements. A fair hearing process, which holds local decision makers accountable and provides a common benchmark for such decisions, is a must.

Those are arguments based on values and principles. But there are more empirical reasons to support this bill.

We noted recently that several counties with the highest unemployment rates had very low W-2 caseloads. One county reported no W-2 cases at all. This is difficult to explain, especially in light of the fact that higher joblessness has generally been accompanied by other unfavorable economic conditions. Those numbers support the concern that families are not receiving help they need and warrants a guarantee of a fair hearing for families who believe the system has not dealt fairly with them.

This concern is further underscored by findings from a recent study of families participating in W-2 in Community Service Jobs and Transitional placements. While many of the respondents said they were being helped by the program, a sizeable majority felt they were not receiving the support they needed from W-2 case workers. This finding adds to the likelihood that some agencies are not providing the help families genuinely need.

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Third, let me cite the experience of Catholic Charities in the Superior diocese.

Shortly after the beginning of W-2, Catholic Charities of the Superior diocese entered into a contract with Douglas County to provide services to W-2 transitional placements. By mutual agreement the contract was not renewed and the contractual relationship came to an end in March of this year.

There was more than one reason for this but, in all candor, a difference in philosophy was one of the major ones. Catholic Charities staff believed that on a number of occasions poor families who were eligible for services were told by the county W-2 agency that they did not need the services. Over time, the staff at Catholic Charities became more uncomfortable with its inability to serve people who were in need of help at a time when there were ample funds to do so.

We believe this experience underscores the need for some form of fair hearing or review when W-2 agencies deny or withhold services to these needy families.

Finally, DWD's own fiscal note projects that only one-third of the rulings appealed in a fair hearing process would be upheld, leaving the implication that two-thirds of the appeals would be decided in favor of the family.

Consider how you would react to such a situation.

How long would legislators tolerate a system in which only one-third of the findings of the Ethics Board were upheld when reviewed by a court or other agency? How long would taxpayers tolerate a Department of Revenue in which two-thirds of its decisions regarding tax liabilities were overturned on appeal? Poor people are created by the same God as the rest of us and have the same claim to due process the rest of us would demand. Basic justice requires that a system exist to allow poor families to challenge erroneous decisions that may harm them.

Whenever welfare reform is discussed, we hear a lot about personal responsibility and accountability. These virtues should be expected of the W-2 agencies as well as the families in the program. Senate Bill 123 can help provide such accountability. Your support for it will be appreciated.

"Job ready" - category - [illegible] job [illegible]

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
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Email: leg.council@legis.state.wi.us

DATE: June 4, 1999

TO: SENATOR JUDY ROBSON, CHAIRPERSON, AND MEMBERS, SENATE COMMITTEE ON HUMAN SERVICES AND AGING

FROM: Laura Rose, Senior Staff Attorney

SUBJECT: Fair Hearing Process Under Temporary Assistance to Needy Families Programs

This memorandum was prepared in response to a question raised by Senator Peggy Rosenzweig at the May 19, 1999 public hearing of the Senate Committee on Human Services and Aging. This question was raised in the context of the committee's public hearing on 1999 Senate Bill 123, relating to the fair hearing process under Wisconsin Works (W-2). Specifically, Senator Rosenzweig asked for information on fair hearing processes which may exist under the Temporary Assistance to Needy Families (TANF) programs in other states.

This memorandum provides background information on 1999 Senate Bill 123. It then describes the processes in seven other states for reviewing adverse decisions under TANF programs.

A. 1999 SENATE BILL 123

Under current law, an individual whose application for W-2 is not acted upon by the W-2 agency with reasonable promptness, or whose application is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly or that the employment position in which the individual is placed is inappropriate, may petition the W-2 agency for review of the action or decision. After the W-2 agency review of the petition, the Department of Workforce Development (DWD) may review the W-2 agency's decision if the applicant or participant or the W-2 agency petitions the DWD agency for review.

1999 Senate Bill 123 modifies this process. Under the bill, an individual whose application for W-2 is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly or that the employment position is inappropriate may petition DWD directly for a review of the action or decision of the W-2 agency.

If the W-2 participant requests a hearing before the effective date of the W-2 agency's action or within 10 days after the mailing of the notice of the action, whichever is later, the participant's benefits may not be suspended, reduced or discontinued, except under limited circumstances, until DWD renders a decision after the hearing.

In addition, under a proposed amendment to the bill (LRB-0416/1), in the event that an individual's application was improperly delayed or denied in whole or in part, the individual may be paid benefits retroactive to the date that the person's application was first improperly delayed or denied in whole or in part, the individual was first placed in an inappropriate W-2 employment position, or where the individual's benefit was first improperly modified or canceled or incorrectly calculated.

B. OTHER STATES' REVIEW OF ADVERSE ACTIONS UNDER TANF PROGRAMS

This part of the memorandum reviews the hearing processes under selected states' TANF programs. Most states appear to have retained fair hearing mechanisms similar to those that were in place under the Aid to Families with Dependent Children (AFDC) Program. (See Welfare Law Center, "Due Process and Fundamental Fairness in the Aftermath of Welfare Reform," *Welfare News*, September 1998.)

A review of several TANF state plans and state statutes governing appeal processes available under TANF reveals a general use of a state level fair hearing process in cases of TANF program adverse actions.

1. Minnesota

Minnesota's TANF program, the Minnesota Family Investment Program, provides for a fair hearing procedure. [Minn. Stats., s. 256J.40.]

Under this procedure, a request for a fair hearing must be submitted in writing to the county agency designated to implement the Family Investment Program or to the Minnesota Commissioner of Human Services. The request must be mailed within 30 days after the petitioner receives written notice of the agency's action or within 90 days of when a person shows good cause for not submitting the request within 30 days. Issues that may be appealed are: (a) the amount of the assistance payment; (b) a suspension, reduction, denial or termination of assistance; (c) the basis for an overpayment, the calculated amount of an overpayment and the level of recoupment; (d) the eligibility for an assistance payment; and (e) the use of protective or vendor payments.

A county agency may not reduce, suspend or terminate payment when an aggrieved participant requests a fair hearing prior to the effective date of the adverse action or within 10 days of the mailing of the notice of adverse action, whichever is later, unless the participant requests in writing not to receive continued assistance pending a hearing decision. Assistance paid pending a fair hearing which is subsequently determined to be improperly paid is subject to recovery. The commissioner's order is binding on a county agency.

Fair hearings must be conducted at a reasonable time and date by an impartial referee employed by the Minnesota Department of Human Services.

2. Massachusetts

The Massachusetts Department of Transitional Assistance administers the Massachusetts TANF program. Any person aggrieved by the failure of the Department of Transitional Assistance to render adequate aid or assistance under a program administered by the department, the failure of the department to approve or reject an application for aid or assistance within 45 days after receiving the application, the withdrawal of such aid or assistance, or coercive or otherwise improper conduct on the part of a social worker, has the right to a hearing, after due notice, upon appeal to the commissioner of the department. The division of hearings is located in the office of the deputy commissioner of the department. [Mass. Gen. Laws, ch. 18, s. 16.]

A hearing must be conducted by a referee at a location convenient to the appellant and must be conducted as an adjudicatory proceeding. A referee may subpoena witnesses, administer oaths, take testimony and secure the production of relevant books, papers, records and documents. The appellant has the right to confront and cross examine all adverse witnesses and to question and refute any testimony, evidence, materials or legal arguments. The decision of the referee shall be the decision of the department.

Decisions must be rendered and issued within 90 days after the date of the filing of the appeal. However, the referee must render and issue the decision within 45 days after the filing of the appeal when an aggrieved person appeals the rejection of an application for aid or assistance, or the failure to act on the application or the failure of the department to render assistance in an emergency or hardship situation.

When a timely request for a hearing is made because of termination or reduction of assistance, assistance must be continued during the period of the appeal. If the decision is adverse to the appellant, the assistance is terminated immediately upon issuance of the decision. If the assistance was terminated before a timely request for a hearing was made, assistance must be reinstated.

3. Washington

Washington's TANF program, the Work First Program, provides that applicants and recipients of assistance must be notified in writing of the Department of Social and Health Services' decisions regarding the type and amount of benefits available to them. Applicants and recipients may request, within 90 days of such notice, an administrative hearing with due process protections conducted by the independent Office of Administrative Hearings under Wash. Rev. Code, s. 78.08. The same appeals process applies also to recipients of other forms of public assistance, such as food stamps. The proceedings are governed by the administrative procedure act. [Wash. Rev. Code, s. 54.05.] In decisions which favor the applicant, assistance is paid from the date of the denial of the application for assistance, 30 days following the application for TANF or 45 days after the date of application for all other programs. In the case of a current recipient, assistance is paid from the effective date of the local community services office's decision.

4. Georgia

Under Georgia's TANF program, an applicant or a recipient for public assistance who is aggrieved by the action or inaction of the Department of Social Services, including any county department of children and family services, is entitled to a hearing. Hearings are conducted by the Office of State Administrative Hearings in accordance with the Georgia Administrative Procedure Act. [Georgia Code Ann., s. 49-4-13.]

Under Georgia Code Ann., s. 49-4-13 (b), an applicant for or a recipient of assistance under the TANF program is authorized to request and receive a hearing to challenge any denial, reduction or determination in assistance based upon any action of the department, including the county Department of Children and Family Services. This statute specifically provides that conferring this right to appeal does not create an entitlement of assistance for a recipient under the TANF program.

5. Florida

Under the Florida WAGES (Work And Gain Economic Self-Sufficiency) Program, if an application for public assistance is not acted upon within a reasonable time after filing the application or is denied in whole or in part, or if an assistance payment is modified or canceled, the applicant or recipient may appeal the decision to the Department of Children and Family Services. Florida Stats., s. 409.285 (3), authorizes the department to adopt rules to administer processes for hearings and appeals. This statute specifically provides that these rules for the TANF program appeals must be similar to the federal requirements for Medicaid programs.

6. Iowa

Iowa Code, s. 239B.16, establishes the appeal mechanism under Iowa's TANF program, the Family Investment Program. An applicant for or participant in the Family Investment Program who is aggrieved by a decision with regard to assistance may appeal to the Iowa Department of Human Services, which must request the Department of Inspections and Appeals to conduct the hearing. The Department of Inspections and Appeals' decision is subject to review by the Department of Human Services, after which judicial review may be sought.

The types of decisions subject to appeal are delay or denial of an application for assistance, or the modification, suspension or cancellation of benefits.

7. Ohio

Under the Ohio Works First Program, Ohio's TANF program, the Department of Human Services is required to provide a fair hearing under s. 5101.35, Ohio Rev. Code, to any applicant for, or participant or former participant of, the Ohio Works First Program who is aggrieved by a decision regarding the program. [s. 5101.80, Ohio Rev. Code.]

The appeals process set forth in s. 5101.35, Ohio Rev. Code, applies to state and local public and private agencies administering human services programs. The statute provides for a

state level hearing conducted by the Department of Human Services at the appellant's request. Departmental decisions may be appealed to the director of Human Services. This decision is subject to judicial review.

If you would like further information on the issues discussed in this memorandum, please do not hesitate to contact me at the Legislative Council Staff offices. My telephone number is 266-9791.

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