

Summary of Public Hearing Comments and Department Response

Wisconsin Works Time Limits and Extensions

DCF 101/CR 18-016

A public hearing was held on March 26, 2018, in Madison. Comments were received from the following:

	Name	Address	Action
1	Beth Swedeen Wisconsin Board for People with Developmental Disabilities		Written
2	Patricia DeLessio, Harold Menendez Legal Action of Wisconsin	31 South Mills St Madison, WI 53705	Oral and Written
3	Adrienne Roach End Domestic Abuse Wisconsin	1245 E. Washington Ave Suite 150 Madison, WI 53703	Oral and Written
4	Ian Henderson Wisconsin Coalition Against Sexual Assault	2801 West Beltline Hwy Ste. 202 Madison, WI 53713	Written
5	Mike Murray Wisconsin Alliance for Women's Health	PO Box 1726 Madison, WI 53701	Written

Comment 1: The department received numerous comments objecting to the proposed changes to the rule on Wisconsin Works (W-2) time limits and extensions. (commenters 1-5 opposed)

Response: The department has withdrawn the proposed changes to the extension criteria and updated the proposed rule in response to concerns raised by public commenters:

- The department has updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include the following:
 - Individuals unable to work due to a personal disability or incapacitation.
 - Individuals who need to remain at home to care for a severely incapacitated family member.
 - Individuals with significant limitations to employment such as any of the following:
 - Low achievement ability, learning disability, or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for supplemental security income under 42 USC 1381 to 1383c or social security disability insurance under 42 USC 401 to 433.
 - Family problems of such severity that they prevent the W-2 participant from obtaining or retaining unsubsidized employment.

- The W-2 participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity.
- The department has updated the proposed definition of “battered or subjected to extreme cruelty” under s. DCF 101.095 (5) (b) to align with the corresponding federal legislation at 45 CFR 264.1 (c). The following circumstances have been added to the proposed definition of “battered or subjected to extreme cruelty”:

 - Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
 - Threats of, or attempts at, physical or sexual abuse.
 - Mental abuse.

- The department has removed the proposal to establish a maximum of 2 extensions.

Comment 2: Two commenters stated that the proposed rule exceeds the department’s statutory authority. (commenters 2 and 3)

Response: Section 49.145 (2) (n) 3, Stats., requires the department to promulgate rule to define “hardship” and the department can further interpret the time limits provisions in rule. Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute. In addition, the Legislative Council Rules Clearinghouse did not comment on this point about the department’s statutory authority.

Comment 3: A commenter indicated that publicly available data on W-2 participation provides little information about the number of extensions approved and denied, or the number of participants currently in either a placement or lifetime limit extension. In the past, DCF published the "Wisconsin Works Critical Indicators" report each month. Neither the department's analysis of the rule nor the Fiscal Estimate & Economic Impact Analysis offers this data. (commenter 2)

Response: The department has included all information required for the proposed rule analysis and Fiscal Estimate & Economic Impact Analysis. The department did not include specific impact estimates due the extreme amount of complexity and variability limiting the department’s ability to accurately predict outcomes. Access to or copies of the department’s records may be requested by email, in writing, by telephone, or in person. The Wisconsin public records law authorizes requesters to inspect or obtain copies of records maintained by government authorities. Finally, the department has withdrawn the proposed changes to the extension criteria and made numerous updates to the proposed rule to address the concerns raised by commenters. The department believes that these changes will minimize the impact on struggling families by allowing the W-2 program to provide continued services to address critical needs of parents with barriers to employment.

Comment 4: Three commenters expressed concern that the proposed definition of “hardship” excludes individuals with permanent disabilities. (commenters 1, 2, and 5)

Response: The department has withdrawn the proposed changes to the extension criteria and updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include individuals unable to work due to a personal disability or incapacitation.

Comment 5: Three commenters expressed concern that the proposed definition of “hardship” excludes parents who have children with disabilities and unpaid caregivers of adults with disabilities. (commenters 1, 2, and 5)

Response: The department has withdrawn the proposed changes to the extension criteria and updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include individuals who need to remain at home to care for a member of the individual’s Wisconsin works group whose incapacity is so severe that without in-home care provided by the individual the health and well-being of the Wisconsin works group member would be significantly affected.

Comment 6: Two commenters expressed concern that the proposed definition of “hardship” excludes individuals with intellectual and developmental disabilities. (commenters 1 and 2)

Response: The department has updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include individuals unable to work due to a personal disability or incapacitation. The department also updated the proposed definition of “hardship” to include individuals with significant limitations to employment such as low achievement ability, learning disability, or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for supplemental security income or social security disability insurance.

Comment 7: Two commenters expressed concern that the proposed definition of “hardship” excludes individuals with disabilities who are awaiting a disability determination from the Social Security Administration. (commenters 1 and 2)

Response: The department has withdrawn the proposed changes to the extension criteria and updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include individuals unable to work due to a personal disability or incapacitation. The department also updated the proposed definition of “hardship” to include individuals with significant limitations to employment such as low achievement ability, learning disability, or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for supplemental security income or social security disability insurance.

Comment 8: A commenter expressed concern that the proposed rule narrows the possibility of extensions without first ensuring that W-2 agencies and contractors are properly assessing participants and developing employability plans that meaningfully address barriers. (commenter 2)

Response: The department has made numerous updates to the proposed rule to allow the W-2 program to provide continued services to address critical needs of parents with barriers to employment.

Current W-2 policy requires a worker to conduct assessments and to use information gathered through the assessment process to develop an employability plan with a participant. (W-2 Manual, Chapter 5.) W-2 workers are required to explore potential barriers with the participant and take steps to address barriers, including referring the participant to supportive services that are appropriate for assisting the participants with overcoming barriers and finding and maintaining employment. Further, the assessment process includes referring a participant for a formal assessment and modifying the employability plan to include services and accommodations recommended in a formal assessment. (W-2 Manual, Chapter 5.)

Comment 9: One commenter expressed concern that the proposed rule excludes individuals experiencing family crises that are not related to an illness, impairment, or disability. Homelessness can also pose a significant barrier to work, especially for a parent who cannot leave a child unattended on the streets or in a shelter. (commenter 2)

Response: The department has withdrawn the proposed changes to the extension criteria and updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include individuals with significant limitations to employment such as family problems of such severity that they prevent the W-2 participant from obtaining or retaining unsubsidized employment

Comment 10: One commenter expressed concern that the proposed rule does not take the low-wage job market into account. This commenter also expressed concern that the proposed rule does not account for economic downturns, such as the 2008 recession. (commenter 2)

Response: The department has withdrawn the proposed changes to the extension criteria and updated the proposed definition of “hardship” under s. DCF 101.095 (5) (a) to include individuals that have made all appropriate efforts to find work and are unable to find employment because local labor market conditions preclude a reasonable job opportunity.

Comment 11: Three commenters expressed opposition to the narrowing of the definition of “battered or subjected to extreme cruelty” on behalf of victims of domestic violence and sexual assault. (commenters 3, 4, and 5)

Response: The department has updated the proposed definition of “battered or subjected to extreme cruelty” under s. DCF 101.095 (5) (a) to read:

Battered or subjected to extreme cruelty. The individual’s Wisconsin works group includes an individual who has been battered, or subjected to extreme cruelty based on the fact that the individual or member of the W-2 group has been subjected to any of the following:

1. Physical acts that resulted in, or threatened to result in, physical injury to the individual.
2. Sexual abuse.
3. Sexual activity involving a dependent child.
4. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
5. Threats of, or attempts at, physical or sexual abuse.
6. Mental abuse.
7. Neglect or deprivation of medical care.

Comment 12: The department received two comments in opposition to the maximum number of extension periods under s. DCF 101.095 (7). One commenter noted that there is no need, nor any

justification, for the department to limit the number of extension periods. (commenter 2) One commenter expressed concern on behalf of victims of domestic violence, as time limits on healing make the path to recovery more challenging. (commenter 3)

Response: The department has removed the proposed changes from the rule and updated the proposed rule to provide that the W-2 agency has the discretion to determine the maximum number of extensions.