

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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SHARON JACKSON,

DOCKET NO. 13-I-077

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**DECISION AND ORDER**

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**LORNA HEMP BOLL, CHAIR:**

This case comes before the Commission following a trial that was held on July 1, 2015, in Milwaukee, Wisconsin. The Petitioner, Sharon Jackson, of Milwaukee, Wisconsin, appeared on her own behalf. The Respondent, the Wisconsin Department of Revenue ("the Department"), appeared by Attorney Mark S. Zimmer. This case involves Petitioner's claims for Earned Income Credit for the tax years 2008-2011 and her claims for Homestead Credit for the tax years 2009 and 2011.

The parties presented their cases and closing arguments before the Chair of the Commission. Having considered the record before it in its entirety, the Commission finds, concludes, and orders as follows:

## FINDINGS OF FACT

1. On August 6, 2012, the Department issued a Notice of Amount Due - Individual Income Tax to the Petitioner for amounts due relative to the periods ending December 31, 2008 and December 31, 2011. (Ex. 1.)

2. Petitioner filed a Petition for Redetermination dated September 14, 2012, which was denied by the Department in a Notice dated February 26, 2013. (Ex. 2 and Ex. 3.)

3. On March 26, 2013, Petitioner filed a timely Petition for Review of the Department's decision. (Ex. 4.)

4. The adjustments in the Department's original Notice stemmed from a lack of substantiation. As this case proceeded, Petitioner provided some of the information needed to substantiate income, expenses, rent paid, and placement of her children.

5. Petitioner claimed to have had income and expenses as follows:

<u>Year</u>	<u>Gross Income</u>	<u>Expenses</u>
2008	\$18,200	\$3,945
2009	\$14,600	\$3,518
2010	\$15,401	\$1,796
2011	\$18,320	\$2,916

6. Petitioner testified that her employer paid her in cash which she periodically deposited into a bank account. Petitioner's tax returns for 2008 and 2009 included W-2s which showed compensation listed below. Petitioner produced no other record of what she was paid. Petitioner introduced no evidence to substantiate expenses but expressed her regret in not retaining such documentation.

7. The record includes the following credible evidence of income:

Year	Gross Income
2008	\$671 (Ex. 5, W-2 Form)
2009	\$1,559 (Ex. 6, W-2 Form)
2010	\$0
2011	\$3,497.58 (Ex. 14, bank deposits)

8. Having reviewed and evaluated the information Petitioner provided prior to trial, the Department has modified its assessment to allow for additional income based upon bank deposits and for rent paid.

9. Petitioner has three daughters, one born June 25, 2003; one born October 21, 2007; and Aleena, born April 8, 2009.

10. Petitioner and Aleena's father agreed that Petitioner could claim Aleena as a dependent for tax purposes.

11. The Department concedes that Petitioner was entitled to claim all three children as dependents for the years at issue.

12. The Department disputes whether Aleena lived with Petitioner to the extent necessary to be a "qualifying child" for purposes of calculating the Earned Income Credit for 2009 through 2011.

13. Petitioner's daughter Aleena was born in April of 2009. Petitioner gave credible testimony regarding her daughter and their living arrangements for 2009. We find mother and child lived together to the extent necessary for Petitioner to claim her as a "qualifying child" for purposes of the Earned Income Credit for 2009.

14. Petitioner admitted that Aleena's father had primary custody pursuant to a 2010 court order. More than one order from family court indicated that, in

2010, Aleena was not spending much time with her mother. The family court orders state that the child lived primarily with her father but are vague as to what time period. Petitioner confirmed that the child did spend about 3 months of 2010 living full-time with her father while the parents were working out a custody dispute. However, Petitioner gave credible testimony that, for other than those three months of custody dispute, mother and child lived together to the extent necessary for Petitioner to claim her as a "qualifying child" for purposes of the Earned income Credit for 2010.

15. The Department relies on the court orders which describe Aleena as living primarily with her father and having only limited contact with Petitioner. These facts, outlined initially in one order dated 2010, are simply reiterated in the subsequent family court orders without any apparent updated factual investigation or findings.

16. Petitioner lived at two different addresses in 2011. Both of her landlords indicated they believed two daughters were living with Petitioner at her Milwaukee address in 2011. However, Petitioner testified credibly that Aleena did live with her when she was in Milwaukee.

17. Petitioner further testified that Aleena would come to Madison with her mother on work days and she would stay with her father in Madison while Petitioner was at work. When Petitioner finished work, either both would stay with Aleena's father or they would both drive back to Petitioner's residence in Milwaukee. There was no testimony that Petitioner left Aleena with her father in Madison other than during the months of the custody dispute in 2010.

18. The personal testimony of Petitioner was more credible than the

information upon which the Department based its belief regarding Aleena's living situation. We find mother and child lived together to the extent necessary for Petitioner to claim her as a "qualifying child" for purposes of the Earned Income Credit for 2011.

19. Petitioner received W2 benefits for seven months in 2009 and for three months in 2011.

### CONCLUSIONS OF LAW

1. Petitioner has not produced sufficient evidence to show error in the Department's calculations of her income, as modified by the Department to reflect income for 2011 gleaned from Petitioner's bank deposits. That aspect of the Department's assessment is upheld.

2. Petitioner may claim three qualifying children for the purposes of the Earned Income Credits for 2009, 2010, and 2011.

3. Petitioner's Homestead Credit is reduced by 7/12 for 2009 to account for months in which she received W2 benefits.

4. Petitioner's Homestead Credit is reduced by 3/12 for 2011 to account for months in which she received W2 benefits.

### OPINION

Petitioner bears the burden to prove the assessments at issue are in error. *Riegal Distributors, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 201-789 (WTAC 1980). That proof must rise to the level of clear and convincing evidence. *Id.*

With respect to income earned, Petitioner readily admitted that she could not substantiate her income beyond the bank deposit information in the record. She had

no receipts, no logs, no records of any kind. Because Petitioner bears the burden to prove error, that aspect of the assessments must stand.

With respect to Aleena as a “qualifying child” for the years in question, we note that the Department allowed Aleena as a dependent for the purposes of the dependent exemption. The standard is somewhat different for claiming credits such as the Earned Income Credit. For the EIC, the child must live with the taxpayer for more than half of the year.<sup>1</sup> Although they lived a somewhat nomadic life, we find credible Petitioner’s testimony that she and her daughter lived together during the years at issue.

With respect to the Homestead Credit, we find that Petitioner was in fact receiving W2 payments in 2009 and 2011, which by law must reduce the amount of credit she can claim.

### ORDER

The Department’s assessment, as modified by the Department and in accordance with the Conclusions of Law above, is affirmed.

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<sup>1</sup> I.R.C. § 152(c) Qualifying Child . – For purposes of this section –  
152(c)(1) In general . – The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual –  
152(c)(1)(A) who bears a relationship to the taxpayer described in paragraph (2),  
152(c)(1)(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, . . . .

Dated at Madison, Wisconsin, this 1<sup>st</sup> day of September, 2015.

**WISCONSIN TAX APPEALS COMMISSION**



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Lorna Hemp Boll, Chair



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David D. Wilmoth, Commissioner

**ATTACHMENT: NOTICE OF APPEAL INFORMATION**

WISCONSIN TAX APPEALS COMMISSION  
5005 University Avenue - Suite 110  
Madison, Wisconsin - 53705

**NOTICE OF APPEAL INFORMATION**

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED  
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS  
RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

***Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION***

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

**AND/OR**

***Option 2: PETITION FOR JUDICIAL REVIEW***

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. **The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.**
2. **If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.**
3. **The 30-day period starts the day after personal service or the day we mail the decision.**
4. **The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.**

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.