

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 14

MILWAUKEE COUNTY

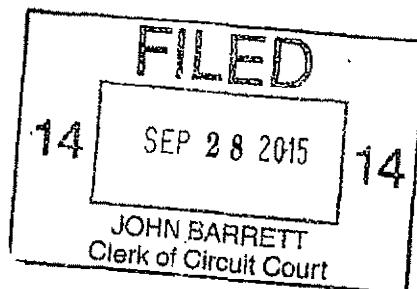
WISCONSIN DEPARTMENT OF  
WORKFORCE DEVELOPMENT,

Plaintiff,

v.

WISCONSIN LABOR AND INDUSTRY,  
REVIEW COMMISSION, BENNY  
NELMS, BOYS & GIRLS CLUB OF  
GREATER MILWAUKEE, INC., and  
MILWAUKEE PUBLIC SCHOOL,

Defendants.



Case No. 14-CV-10615

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### DECISION AND ORDER

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The Petitioner, the Wisconsin Department of Workforce Development (“DWD”) seeks judicial review of a decision of the Wisconsin Labor and Industry Review Commission (“LIRC”) which decided that Benny Nelms, under Wis. Stat. § 108.04(12)(f)1., was ineligible to receive unemployment insurance (“UI”) only for week 9 of 2014 due to the fact that he actually received a Social Security Disability Insurance (“SSDI”) payment in week 9 of 2014. This Court has reviewed the record, and for the reasons stated herein, orders LIRC’s decision to be set aside and remands the matter to LIRC to reinstate the initial determination denying unemployment benefits to Nelms.

### STATEMENT OF FACTS

This case originates from a determination by the Department of Workforce Development (“DWD”) regarding Nelms’ claims for UI. The determination in question involved whether Nelms was ineligible for UI only for the week he actually received SSDI payment or for the entire month that the SSDI benefit was received. DWD determined that Nelms was ineligible for UI for the entire month that Nelms received SSDI benefits. LIRC reversed, determining that Nelms was ineligible for UI only for the week in which Nelms received SSDI payment. DWD now seeks judicial review of the LIRC decision.

## STANDARD OF REVIEW

Findings of fact made by LIRC will be binding on a reviewing court in the absence of fraud or lack of support by substantial and credible evidence. Wis. Stats. §§ 102.23(1)(a), 102.23(6); *Wisconsin Department of Industry, Labor and Human Relations, Unemployment Compensation Division v. Labor and Industry Review Commission*, 155 Wis. 2d 256, 262, 456 N.W.2d 162 (Ct. App. 1990). “[T]he court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact.” Wis. Stat. § 102.23(6). A court may set aside an order or award of an administrative agency only upon three grounds: (1) the agency acted without or in excess of its powers; (2) the award was procured by fraud; or (3) the findings of fact by the agency do not support the order or award. Wis. Stat. § 102.23(1)(e); *Patrick Cudahy Inc. v. Labor and Industry Review Commission*, 2006 WI App 211, ¶ 5, 296 Wis. 2d 751, 723 N.W.2d 756.

An agency’s interpretation of a statute, on the other hand, is not binding upon a reviewing court. *Id.*, ¶ 8. However, depending upon the circumstances, varying degrees of deference are given to an agency’s interpretation. *Id.* One of three standards of review is generally applied when a court reviews an agency’s legal conclusions under a statute: great weight deference, due weight deference, or *de novo* review. *Id.*, ¶ 9. Bach asserts that *de novo* review is appropriate. LIRC argues that its interpretation and application should be accorded due weight deference.

“A reviewing court accords an agency’s statutory interpretation no deference when any of the following conditions is met: (1) the issue is one of first impression; (2) the agency has no experience or expertise in deciding the legal issue presented; or (3) the agency’s position on the issue has been so inconsistent as to provide no real guidance.” *Racine Harley-Davidson, Inc. v. State, Div. of Hearings & Appeals*, 2006 WI 86, ¶ 19, 292 Wis. 2d 549, 717 N.W.2d 184. Under no deference review, “the reviewing court merely benefits from the agency’s determination and may reverse the agency’s interpretation even when an alternative statutory interpretation is equally reasonable to the interpretation of the agency.” *Id.*, ¶ 20.

This Court concludes that LIRC’s interpretation and application of the statutory regime is entitled to no deference. Wis. Stat. § 108.04(12)(f)1. is a recently enacted statute. Interpretation of the statute is one of first impression for LIRC. Though LIRC has interpreted the same issue consistently on multiple occasions, only a limited number of LIRC’s decisions have been

reviewed by circuit courts and the Wisconsin Court of Appeals has yet to make a ruling on the instant issue. Accordingly, LIRC's decision is accorded no deference.

### ANALYSIS

Chapter 108 of the Wisconsin Statutes establishes UI benefits and eligibility. Wis. Stat. § 108.02(11) provides, “[a]n employee shall be deemed ‘eligible’ for benefits for any given week of the employee’s unemployment unless the employee is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed ‘ineligible’ for any week to which such disqualification applies.” Wis. Stat. § 108.02(11). The statute under review, Wis. Stat. § 108.04(12)(f)1., states, “[a]ny individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter.” Wis. Stat. § 108.04(12)(f)1.

Wis. Stat. § 108.04(2)(h) provides, “[a] claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance benefits insurance benefits under 42 USC ch. 7 subch. II.” Wis. Stat. § 108.04(2)(h).

In Wisconsin, eligibility for UI benefits requires weekly action on the part of the individual who seeks the benefits. “To receive benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.” Wis. Stat. § 108.08(1). Federal SSDI payments are available to individuals, “for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits.” 42 U.S.C. § 423(a)(1).

In the instant action, LIRC reversed DWD's initial determination denying benefits to Nelms. LIRC decided that Nelms was ineligible only in week 9 but eligible in subsequent weeks because Nelms only received SSDI payment in week 9. Thus, LIRC decided that an individual is only ineligible for UI under Wis. Stat. § 108.04(12)(f)1. for the week in which the individual received SSDI payment. In order to reach resolution of the instant issue, this Court must undertake in statutory interpretation of Wis. Stat. § 108.04(12)(f)1. and Wisconsin's UI statutory regime.

Statutory interpretation “begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citing *Seider v. O’Connell*, 2000 WI 76, ¶¶ 43-53; 236 Wis.2d at 232, 612 N.W.2d 659). Thus, this Court must first determine whether the language of Wis. Stat. § 108.04(12)(f)1. is plain or ambiguous.

Both LIRC and DWD assert that the statute’s meaning is plain. A disagreement over the meaning of a statute does not necessarily indicate that the statute is ambiguous. *See Lincoln Sav. Bank Sva. v. DOR*, 215 Wis. 2d 430, 441-442, 573 N.W.2d 522 (1998). Nonetheless, “a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses” *Kalal*, 2004 WI at ¶ 47. The test, therefore, is whether the language of the statute reasonably gives rise to different meanings. *Id.*

This Court finds that the meaning of Wis. Stat. § 108.04(12)(f)1. is ambiguous. Though it is not controlling, it is strongly persuasive that two different agencies reach different results while interpreting the statute. DWD asserts that an individual “actually receives social security disability insurance benefits” for every week of the month in which the individual receives an SSDI payment. LIRC asserts that an individual “actually receives social security disability insurance benefits” in the week in which the SSDI payment is received. On their face, both of these interpretations appear to be reasonable. It follows that Wis. Stat. § 108.04(12)(f)1. reasonably gives rise to different meanings. Accordingly, the statute is ambiguous.

Because the statute is not plain on its face, this Court may look to scope, context, and purpose in order to ascertain the appropriate interpretation of the statute. *See Teschendorf v. State Farm Ins. Companies*, 2006 WI 89, ¶ 12, 293 Wis. 2d 123, 134, 717 N.W.2d 258. “[W]ords are given meaning to avoid absurd, unreasonable, or implausible results and results that are clearly at odds with the legislature’s purpose.” *State v. Matasek*, 2014 WI 27, ¶ 13, 353 Wis. 2d 601, 610, 846 N.W.2d 811. Upon analysis of the text, the purpose, and the context of the statute, this Court concludes that the appropriate interpretation of Wis. Stat. § 108.04(12)(f)1. is such that an individual is ineligible for UI benefits for the entire month during which the individual receives SSDI benefits.

The purpose of the Wis. Stat. § 108.04(12)(f)1. is to prevent duplicative wage replacement benefits.<sup>1</sup> Federal SSDI benefits consist of a single payment but a month long

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<sup>1</sup> Wis. Stat. § 108.04(12). is titled “Prevention of Duplicative Benefits”.

benefit. SSDI eligible individuals are entitled to SSDI benefits “for each month,” rather than for each week. 42 U.S.C. § 423 (a)(1). SSDI payments, though received on one day in one given week, constitute a month’s worth of SSDI benefits. This distinction is important in interpreting the meaning of Wis. Stat. § 108.04(12)(f)1. because the statute refers to individuals who “actually receive social security disability *benefits*” in a given week rather than a social security disability *payment* in a given week. Wis. Stat. § 108.04(12)(f)1. (emphasis added).

Because Wis. Stat. § 108.04(12)(f)1. incorporates 42 U.S.C. § 423 by reference, the two statutes should be read together as one larger act. *Union Cemetery v. City of Milwaukee*, 13 Wis. 2d 64, 67, 108 N.W.2d 180, 181 (1961) (“The effect of incorporating the provisions of another statute by words of reference rather than by verbatim repetition of the provisions of the statute previously enacted is to make the earlier or adopted statute as much a part of the later or incorporating statute as though the provisions had been set forth verbatim and at length.”); *Engel v. Davenport*, 271 U.S. 33, 38, 46 S. Ct. 410, 412, 70 L. Ed. 813 (1926) (“The adoption of an earlier statute by reference makes it as much a part of the later act as though it had been incorporated at full length.”).

Reading Wis. Stat. § 108.04(12) and 42 U.S.C. § 423 together as a single statute, it becomes apparent that LIRC’s interpretive position is untenable. LIRC asks this Court to adopt the position that an individual “actually receives social security disability benefits” only during the week in which the individual receives his or her SSDI payment. However, the federal SSDI statute plainly indicates that SSDI is a monthly benefit. *See* 42 U.S.C. § 423 (a claimant “shall be entitled to a disability insurance benefit (i) for each month”). To adopt LIRC’s interpretive position would be to replace the term “benefits” in Wis. Stat. § 108.04(12)(f)1. with the term “payment”. This replacement is unnecessary and erroneous because 42 U.S.C. § 423 instructs on the meaning of the word “benefits”. Moreover, LIRC’s interpretation would frustrate the purpose of the statute. Although a claimant receives SSDI benefits for an entire month, LIRC’s position would only hold the individual ineligible for UI for the one week in which he or she received SSDI payment. Such an application of the statute does not prevent the duplication of benefits.

This Court finds that the most reasonable interpretation of Wis. Stat. § 108.04(12)(f)1. is in line with the initial DWD determination. Under the statute, read together with 42 U.S.C. § 423, an individual is ineligible for UI benefits for every week of the month during which he or

she “actually receives social security disability benefits” regardless of when the monthly payment occurs.

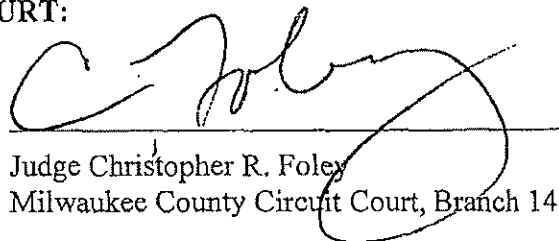
In the instant action, Nelms applied for UI benefits in the week ending in March 1, 2014. Because Nelms received SSDI payment that week, LIRC found that he was ineligible for UI during that week but eligible during the remaining weeks of March 2014. This interpretation of Wis. Stat. § 108.04(12)(f)1. is incorrect. Nelms actually received SSDI benefits for the entire month of March 2014. Accordingly, Nelms is ineligible to receive UI benefits for every week in March 2014 under the most reasonable interpretation of Wis. Stat. § 108.04(12)(f)1.

### CONCLUSION

For the reasons stated in this Decision and Order, **IT IS HEREBY ORDERED** that the decision of the Labor and Industry Review Commission is **REVERSED AND REMANDED** with instructions to reinstate the initial Department of Workforce determination denying Benny Nelms unemployment insurance benefits.

Dated this 28 day of September, 2015, in Milwaukee, Wisconsin.

BY THE COURT:

  
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Judge Christopher R. Foley  
Milwaukee County Circuit Court, Branch 14

**THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSES OF APPEAL**