



the work program. On August 21, 2015, the Department mailed a notice, *FoodShare Employment and Training Program Referral*, to the petitioner at his correct mailing address. This notice advised him that he had been referred to the mandatory work program, FSET, unless he was exempt or working at least 80 hours monthly. A person seeking an exemption was directed to fill out the attached *Proof of Work Requirement Exemption* form. Further, the notice declared that without participation, the petitioner would receive FS for only three months out of a 36-month period. *See*, Exhibit 2.

3. On September 2, the local agency mailed the petitioner an *FSET Initial Appointment Scheduled* letter, advising him to appear for his first FSET appointment on **September 10**, 2015, at 1:00 p.m. The letter was sent [REDACTED], Madison, WI 53704, which is the mailing address that the petitioner gave to the agency at his application. The letter was not returned by the Postal Service as undeliverable. He did not appear or contact the agency prior to or on the date of the appointment. *See*, Exhibit 3.
4. On September 22, the petitioner telephoned the agency, asking to reschedule his missed appointment. The agency agreed and advised him verbally that the next appointment would be on **September 25** at 1:00 p.m. The local agency mailed the petitioner another *FSET Initial Appointment Scheduled* letter on September 23, 2015, advising of the September 25 appointment at 1:00 p.m. The letter was sent to the correct address and was not returned. *See*, Exhibit 4. The petitioner did not appear for the September 25 appointment.
5. On October 19, 2015, the Department mailed a notice to the petitioner advising that his FS would be discontinued effective November 1, 2015. The basis for discontinuance was (1) failure to participate in FSET, and (2) expiration of the three-month benefit grace period (August/September/October 2015).
6. The petitioner is not exempt from participation in the FSET work program.
7. The petitioner has not participated in the FSET work program.
8. The petitioner did not have good cause for his failure to appear for an initial appointment.

### **DISCUSSION**

Effective April 1, 2015, Wisconsin imposed an ABAWD work program requirement statewide. Under ABAWD rules, non-exempt, able-bodied, childless adults must meet ABAWD work requirements in order to continue receiving FS benefits. An ABAWD is a person who is (1) 18 – 49 years old, (2) able to work, (3) not residing in a household with a minor child, and (4) not pregnant. *See*, *FoodShare Wisconsin Handbook (FSH)*, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner is an unemployed ABAWD person. An ABAWD may be exempt from work requirements under these limited circumstances:

**EXEMPT ABAWD:** A FS member is determined an exempt ABAWD if he or she is an ABAWD who meets at least one of the following criteria, as determined by the IM agency:

- Determined unfit for employment, which includes someone who is:
  - - Receiving temporary or permanent disability benefits from the government or a private source;
    - Mentally or physically unable to work, as determined by the IM agency;
    - Verified as unable to work by a statement from a health care professional or a social worker.

- Receiving Unemployment Compensation (UC) or has applied for UC and is complying with UC work requirements;
- Regularly participating in an alcohol or other drug abuse (AODA) treatment or rehabilitation program;
- A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1);
- A high school student 18 years of age or older, attending high school at least half-time;
- Primary caregiver of a dependent child under age 6 or an incapacitated person;
- Receiving transitional FS benefits; or
- Meeting the ABAWD work requirement outside of FSET through work and/or other allowable work program participation.

Exempt ABAWDs are not subject to TLBs [time-limited benefits of 3 months] during months in which they have a verified exemption. Correct determination of ABAWD exemptions impacts whether or not members are subject to time-limited FS benefits (TLBs). ABAWDs may cycle on and off FS benefits and may gain or lose exemptions for a variety of reasons.

*FSH*, § 3.17.1.5. See also, 7 C.F.R. § 273.7(b)(1).

The petitioner did not argue or present evidence to support an exemption from the program.

Given that the petitioner was not exempt from August through October, we now turn to his failure to appear for two enrollment appointments. The requirement that he enroll in a work program such as FSET, is permissible under federal FS rules. 7 C.F.R. § 273.7(a)(1)(ii). The failure to meet work or work program requirements results in ineligibility after three months of such failure. 7 C.F.R. §§ 273.7(f)(1) and 273.24(b).

The agency is required to schedule a minimum of two enrollment appointments; the agency scheduled the minimum here (September 10 and 25). *FSET Handbook*, § 3.5.2. The petitioner did not establish that he had “good cause” for missing either of his two FSET enrollment appointments. *FSET Handbook (FSET)*, <http://www.emhandbooks.wisconsin.gov/fset/fset.htm>, at §6.6. See also, 7 C.F.R. § 273.24(b)(2). He stated that he was very distracted in September because he was involved in a child custody battle with the mother of his child. His distraction is understandable, but does not rise to the level of good cause for missing two appointments.

### **CONCLUSIONS OF LAW**

1. The petitioner, an unemployed ABAWD, failed to timely enroll or otherwise participate in the FSET program for at least three months.
2. The Department correctly discontinued the petitioner’s FS effective November 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 23rd day of February, 2016

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 23, 2016.

Dane County Department of Human Services  
Division of Health Care Access and Accountability