



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FWP - 175283

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 30, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on July 27, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether this this ALJ has jurisdiction over a matter already dismissed in a prior fair hearing decision.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner completed a renewal for his FoodShare (FS) benefits on January 7, 2016. Based on the information provided, the petitioner was an able-bodied adult without dependents.

3. On January 8, 2016 the agency sent the petitioner a notice explaining that he had been referred to the FoodShare Employment and Training (FSET) program along with the program rules and sanctions for failing to participate.
4. The petitioner failed to enroll or participate in the FSET program.
5. The petitioner received FS benefits in February, March, and April 2016.
6. On April 18, 2016 the agency sent the petitioner a notice stating that effective May 1, 2016 his FS benefits would end because he had used up his three months of time limited benefits without participating in FSET.
7. The petitioner timely requested a fair hearing regarding the discontinuation of his FS benefits in Division of Hearings and Appeals case number 173887. That hearing was scheduled. The petitioner failed to appear for the hearing.
8. On May 20, 2016 the Division of Hearings and Appeals dismissed the petitioner's appeal due to his failure to appear. The decision stated that the petitioner had 20 days to request a rehearing from the Division of Hearings and Appeals and 30 days to appeal to Circuit Court. This decision was sent to the petitioner's correct address. The petitioner received this decision. The petitioner did not request a rehearing, and did not appeal to Circuit Court.
9. On June 30, 2016, 40 days after the previous dismissal, the petitioner requested another fair hearing regarding the discontinuation of his FS benefits for failing to comply with the FSET program.

### DISCUSSION

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as *collateral estoppel*) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner has had his opportunity to contest the termination of his FS benefits under case number 173887. The petitioner failed to appear for that hearing. A decision was issued and mailed to his correct address explaining the procedure for requesting a rehearing and/or appealing to circuit court. The petitioner did neither. The petitioner now seeks an appeal to address the exact same FSET issue that he previously appealed. This is outside of the time limit in which to grant a rehearing, and thus I am without jurisdiction to decide this issue.

Even if I had jurisdiction, I would rule against the petitioner. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. *FoodShare Wisconsin Handbook*, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the *FSET Handbook*, as follows:

### 6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

### 6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

*FSET Handbook*, §§ 6.3.2.1 & 6.3.2.2; and see *FoodShare Wisconsin Handbook* at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. *FoodShare Wisconsin Handbook*, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. *Ibid.*, §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS *after* meeting the requirement for 30 days). *Ibid.*, §3.17.1.11.

The petitioner admits that he did not participate in the FSET program in February, March, or April 2016. He states that there were two deaths in his family. Both his brother and his mother's cousin passed away. One death was in January, the other death was during the three time limited benefits months. The petitioner only has to participate 20 hours per week in FSET. A standard funeral bereavement leave is 3 work days. Two family deaths in a four month period is not a good cause reason for failing to participate in FSET for three full months. Thus, although I do not have jurisdiction, even if I had jurisdiction, the agency correctly terminated the petitioner's FS benefits effective May 1, 2016 for failing to participate in the FSET program.

### CONCLUSIONS OF LAW

I do not have jurisdiction over a matter already dismissed in a prior fair hearing decision.

**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, **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 Milwaukee,  
Wisconsin, this 29th day of July, 2016

\s \_\_\_\_\_  
Corinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 29, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability