



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



FOO/162985

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 22, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency has been able to meet its burden to show that Petitioner's FoodShare was correctly discontinued for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Rhonda Kramer

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.
2. Petitioner filed this appeal to contest the discontinuance of his FoodShare benefits effective January 1, 2015. Those benefits were discontinued for an alleged failure to participate in the

FoodShare Employment and Training (FSET) program as an Able-bodied Adult without Dependents (ABAWD) who was required to meet a work requirement.

3. Petitioner applied for FoodShare benefits in September 2014. That application was approved, the agency determined that Petitioner was not exempt from ABAWD work requirements and he was assigned to the FSET program.
4. Case comments from the FSET program notified the economic support agency that the FSET program sent Petitioner a notice on September 25 notifying him of a November 2014 FSET enrollment/orientation appointment. It indicated that it followed that up with an October 13, 2014 e-mail. When Petitioner missed the November 4, 2014 appointment, a second letter and email was sent to him setting up a December 4, 2014 appointment. Petitioner did not appear for the December 4 appointment hence the case closure noted at Finding #2.
5. Copies of the FSET letters were not available for the hearing. Though case notes make apparent that the FSET agency had the correct email address for Petitioner, copies of the emails were not made available either.

DISCUSSION

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2*. This will be implemented statewide as of April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1*. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.

...
FSH §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
 - a. Receiving temporary or permanent disability benefits from the government or a private source;
 - b. Mentally or physically unable to work, as determined by the IM agency;
 - c. Verified as unable to work by a statement from a health care professional or social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
6. Is a full-time high school student age 18 or over;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

FSH §3.17.1.5.

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.
FSH, §13.17.1.7.

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FSH, §3.16.1.4.* As just noted, a person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FSH, §3.17.1.17.*

Here the FSET program notified the economic support program that it had sent Petitioner notices for FSET enrollment and orientation but Petitioner did not appear. This led to the discontinuance of FoodShare benefits effective January 1, 2015. Petitioner maintains that he never received the written notices that were mailed to him and has no regular internet access to check email. The problem here is that the economic support agency was not provided with the actual appointment letters and emails and there was no FSET representative at the hearing. An appearance by an FSET representative is directed by *DHS Operations Memo # 14-27, Amended, effective July 1, 2014 in Kenosha, Racine and Walworth and Statewide April 1, 2015, at Page 16, 'Fair Hearings'*.

In a hearing concerning the propriety of a discontinuance of benefits due to a work program sanction, the agency has the burden of proof to establish that the agency action taken was proper given the facts of the case. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's prima facie case.

Without an appearance by FSET or even copies of its notices and emails, the agency is not able, and has not met, its burden of proof. There is no proof of what was sent where or when or what was stated on whatever communications were sent. I am not, therefore, sustaining the case closure and it must be reversed.

CONCLUSIONS OF LAW

1. That the agency has not met its burden to show it correctly sanctioned Petitioner for failing to report to a Food Stamp Education and Training Program (FSET) appointment.
2. That the January 1, 2015 case closure must be removed and Petitioner's FoodShare reinstated.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to take the administrative steps necessary to reverse the January 1, 2015 closure of Petitioner's FoodShare case for failing to meet ABAWD work requirements. This shall be done within ten (10) days of the date of this Decision.

NOTE – nothing here should be read to mean that Petitioner is exempt from, or has met, ABAWD work requirements and the agency is required to assure that he meets those requirements going forward or may again sanction Petitioner.

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 Milwaukee,
Wisconsin, this 18th day of February, 2015

\sDavid D. Fleming
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 February 18, 2015.

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