



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/163501

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2015, under Wis. Admin. Code §HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a telephonic hearing was held on March 05, 2015.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective January 1, 2015.

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, Wisconsin 53703

By: Rhonda Kramer, Lead ESS
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner applied for FS on September 5, 2014. She was confirmed as eligible for FS effective October 1, 2014.

3. On October 2, 2014 the FS agency issued a FoodShare Employment and Training Program Referral to the petitioner. Exhibit 7.
4. Petitioner was scheduled for an orientation to FSET on October 27, 2014. Petitioner had to reschedule this appointment.
5. Petitioner was scheduled for an orientation to FSET on November 13, 2014. Petitioner missed this appointment.
6. Petitioner was scheduled for an orientation to FSET on December 18, 2014. Petitioner attended this appointment and an Employability Plan was created for her for FSET. See Exhibit 9.
7. On December 19, 2014 the agency issued a notice of decision to petitioner stating that her FS would end January 1, 2015 because she had used 3 months of time limited benefits without meeting a work requirement during those 3 months.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required 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.

On June 11, 2014 the Department of Health Services (DHS) issued Operations Memo #14-25 which outlined Wisconsin's policy and instruction for applying Time-Limited FoodShare Benefits (TLBs) to ABAWDs. Operations Memo #14-25, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-25amendedv3.pdf>. As explained in that Memo, effective July 1, 2014, FS applicants and members residing in Kenosha, Racine, and Walworth counties were subject to the new eligibility rules which determine if a person is an ABAWD subject to time-limited FS benefits. *Id.* Thus, when petitioner applied in September 2014 for FS, she was subject to these new rules.

The problem with this case is that the FSET representative did not show to explain how a determination was made that the petitioner did not meet the work requirements in her 3 months of TLBs. Petitioner was attempting to enroll in FSET, but for a variety of reasons, did not have her enrollment and orientation until the third month of the TLB. Petitioner applied for FS in September 2014. After verifications were received, she was confirmed eligible effective October 1, 2014. The FSET referral letter then was mailed to her on October 2, 2014, and states that she has been referred to FSET, that petitioner and other household members "may" take part in FSET when FS benefits begin, and that an "FSET agency in your area will contact each person listed below [only showing petitioner's name] to set up an appointment to enroll in the FSET program." The letter goes on to state that a "referral was sent to the FSET program for this member because he or she asked to take part in the FSET program. If this member no longer wants to take part in FSET, contact the agency listed above. FoodShare benefits will not decrease or end if this member does not take part in FSET activities." Exhibit 7.

I find this language within that referral confusing. First, it tells her she would be contacted *to enroll* in the FSET program. I think a plain reading of that language would reasonably lead one to believe that one is not in the FSET program until enrolled. Secondly, it states that FS will not decrease or end if this member does not take part in FSET activities. Thirdly, the direct testimony of the petitioner's mother was that they were told [she has been helping her daughter with the FS/FSET process due to her daughter's

learning disabilities] that between petitioner's work hours and schooling, that she may meet the work requirements. The Case Comments submitted by the agency at hearing show that petitioner was reporting work and school enrollment to the agency as of the month of application and ongoing. See Exhibit 1. Therefore, without the FSET representative to explain how s/he determined that petitioner was not meeting the work requirements or FSET requirements in October or November, I cannot find that she did not. Again, the other part of the problem is the referral letter telling her conflicting information about how to comply, if she indeed had to.

Additionally, there was no dispute that on December 18, 2014 the petitioner enrolled in FSET, an Employability Plan (EP) was created for her, and she was given another appointment to meet with her FSET case manager on December 29, 2014. Exhibit 9. The EP lists her Assigned Activities as employment with [REDACTED] Customized Skills Training with [REDACTED] (petitioner's schooling online), and Job Retention with [REDACTED] *Id.* There is also no dispute that one day after her enrollment, the agency issued the notice telling her that her FS would close because she had used 3 months of time limited benefits without meeting a work requirement during those 3 months. The Case Comments from the December 29 meeting state that the FSET case manager advised petitioner that:

she is FS ineligible and services cannot be provide to her at this moment until her status change. Client stated that she wasn't aware about submitting job logs every Friday by 4:00 p.m. Case manager recommended client to contact Racine Team 1 about her benefits. Case manager explained to client that she was in her 3rd TLB when she was enrolled in the program and no participation was track due that she failed to submit documentation about employment in order to track her participation in the program. Client drop off pay stubs and stated she was unable to attend FSET program before because she was between school and employment.

Exhibit 1.

The case is confusing to say the least, and further complicated that the agency's case is largely presented through Case Comments. Petitioner might have been told her schooling could meet FS requirements, might have been told it was not. But, she was approved for that activity through the EP. However, she does not appear to have been given the opportunity to use that schooling to help her meet the FSET requirements even after it was approved. She may have begun complying with the FSET requirements in October as the referral told her she could, but then as of December 19 it appears the agency would not look retroactively at it. She may have been told that she did not submit job logs, but that was not listed as a requirement in the referral letter or EP. Case Comments are replete with entries of the petitioner and her mother attempting to understand and comply with the requirements and entries showing that various agency personnel were looking to update the case "so the sanction could be lifted." *Id.*

Further, from the scant evidence presented at hearing, petitioner might have been able to regain eligibility after December, as petitioner continued efforts to meet the FSET requirements that were outlined in the EP. I note the EP was developed at the enrollment on December 18, but the EP was not signed until December 29. The *FS Handbook* states that "During a 36-month period, an ABAWD may continue receiving FS benefits or regain eligibility after exhausting the 3 months of TLBs as long as the ABAWD is meeting the work requirement or an exemption, or is determined to be a Non-ABAWD. *FS Handbook*, §3.17.1.10, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. It also states:

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility (6.1.3.3). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;
 - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
 - Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
 - The ABAWD's 36-month period expires.

FS Handbook, §3.17.1.11. I do not doubt that petitioner was attempting to meet her work and FSET requirements once she understood what they were as of the end of December. I also do not doubt that she was trying to understand why the agency determined that she was FS ineligible in December, and that numerous contacts were made with the agency to understand their position. The agency's Case Comments reflect this and show conflicting information about how petitioner could regain eligibility.

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it determined that her FS should end January 1, 2015. Without an FSET representative appearing to rebut petitioner's direct testimony or provide explanation for how it determined on December 19 that petitioner was not meeting a work requirement, I cannot find that it met its burden. 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 meeting a work requirement.
2. That the January 1, 2015 case closure must be removed and petitioner's FS reinstated.

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 ADAWD work requirements. This shall be done within ten (10) days of the date of this Decision.

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 23rd day of March, 2015

\sKelly Cochrane
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 March 23, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability