



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/164864

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 23, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 15, 2015, at Racine, Wisconsin.

NOTE: With the Petitioner's permission, ALJ Ishii printed off the CCAP records for the Petitioner's pending criminal case. It has been marked as Exhibit 13 and entered into the record.

The Petitioner submitted a copy of her modified bond agreement. It has been marked as Exhibit 14 and entered into the record.

The agency submitted additional case comments and pin comments entered by FSET workers. They have been marked as Exhibit 15 and entered into the record.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly ended the Petitioner's FoodShare benefits effective April 1, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] |  
[REDACTED] |  
[REDACTED] |  
[REDACTED] |

Respondent:

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

By: Virginia Chabrier, Lead Economic Support Specialist  
Racine County Department of Human Services  
1717 Taylor Ave.  
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:  
 Mayumi M. Ishii  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On December 2, 2014, the agency sent the Petitioner a notice indicating that she had been referred to the FSET program. (Exhibit 11)
3. On January 19, 2015, the Petitioner was taken into custody. (Exhibit 14)
4. On January 20, 2015, the Petitioner made her Initial Appearance in court, at which time she was placed on GPS monitoring. The court, as a condition of bond, allowed the Petitioner out of her home for only two reasons: to attend court or to consult with her attorney. (Exhibit 14)
5. On March 18, 2015, the agency sent the Petitioner a notice, indicating that her FoodShare benefits would be ending effective April 1, 2015, because she had used up her time limited benefits without meeting a work requirement. (Exhibit 12)
6. The Petitioner filed a request for fair hearing that was received by Racine County on March 23, 2015. The appeal was forwarded to the Division of Hearings and Appeals on March 25, 2015. (Exhibit 1)
7. On March 31, 2015, the Petitioner had a bail/bond hearing, at which time the court modified the Petitioner's condition of bond to allow her movement to attend doctors' appointments and to seek employment at [REDACTED]. (Exhibit 13)

### DISCUSSION

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and will be implemented statewide, effective January 1, 2014. *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:

1. 18 to 49 years of age,
2. Able to work,
3. Not residing in a household with a child under age 18, and
4. Not pregnant

*FSH §3.17.1.4*

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

1. Is determined unfit for employment;
2. Is receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;

3. Is regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. Is a student of higher education and is otherwise eligible for FoodShare benefits under §3.15.1.
5. Is a high school student 18 years of age or older, attending high school at least half-time;
6. Is a primary caregiver of a dependent child under age 6 or an incapacitated person;
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*

Looking at the PIN Comments and the Case Comments, it is not entirely clear why the FSET program decided the Petitioner was not meeting participation requirements. No one from the FSET program appeared at the hearing and the FSET program did not provide any copies of any appointment letters or notices that it sent to the Petitioner. It should be noted that 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'*. See Also *FoodShare Employment and Training Handbook (Release 15-01) Section 9.5*.

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 action taken by the agency 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 e-mails, 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.

At the hearing the Petitioner argued that she should have been exempt from work requirements because she has been babysitting her granddaughter from 6:00 a.m. to 3:00 p.m. Monday through Friday, since March 2015 and because she is unable to work due to problems with her right knee. The Petitioner also argued that she had good cause for any non-participation between January 20, 2015 and March 31, 2015, because she was on GPS monitoring and the court did not allow her to go to FSET appointments during that time.

With regard to GPS monitoring, the agency has not cited to any law to support its conclusion that the prohibitions imposed by a circuit court judge do not constitute good cause for non-participation. Under section 6.6.1 of the *FoodShare Employment and Training Handbook (Release 15-01)*, it states, "Good cause may be granted for temporary circumstances beyond the ABAWD's control." That section lists some examples of good cause reasons for non-participation, but also states that the list is not exhaustive. See also *Ops Memo 14-27 – Amended 5/18/15*.

In the case at hand, the Petitioner was placed on GPS monitoring by the circuit court as a condition of bail, on January 20, 2015. The court did not grant her any out time for job searches, job interviews or to attend appointments at the FSET program. Although the Petitioner could and did apply for jobs on-line (see Exhibit 6), if the Petitioner ignored the parameters set by the court, and left her home for an FSET appointment, a job interview or to start working a job, she would have been in violation of the law and could have been charged with bail jumping and possibly even escape. Beyond asking nicely, the Petitioner had little control over what the court would or would not allow as a condition of bail/bond. As such, she had good cause for non-participation in the FSET program between January 20, 2015 and March 31, 2015.

With regard to her claim that she should be exempt for the month of March 2014 going forward because she has been caring for her granddaughter Monday through Friday from 6:00 a.m. to 3:00 p.m., the law does not support this. *FSH §3.17.1.5* states that in order to be exempt from ABAWD work requirements, the individual must be the *primary* caregiver for the child. In the case at hand, the Petitioner is not the primary caregiver for her grandchild, she is the babysitter. As such, the exemption does not apply.

With regard to Petitioner's statement that she is unable to work due to health reasons, her claim is not supported by the record. First, the fact that she is able to babysit for her granddaughter nine hours a day contradicts her claim that she is unable to work. Second, none of the medical documentation that the Petitioner provided contains a statement from her physician stating that she is unable to work. If Petitioner believes that she has been unable to work due to medical reasons, she will need to provide the agency with explicit verification from her physician, stating that she is unable to work, why she is unable to work, when she stopped being able to work and when she is likely to be able to return to work.

**NOTE – nothing here should be read to mean that Petitioner is exempt from, or has met, ABAWD work requirements after March 31, 2015. The agency will have to review that matter and determine whether Petitioner's time limited benefits have expired since March 31<sup>st</sup>. If they have, the agency will have to issue a new notice to the Petitioner. If Petitioner disagrees with the new notice, the Petitioner may file a NEW appeal.**

#### CONCLUSIONS OF LAW

1. That the agency has not met its burden to show it correctly sanctioned Petitioner for non-participation in the FSET program.
2. The Petitioner had good cause for non-participation in the FSET program for the period of January 20, 2015 through March 31, 2015, because she was on GPS monitoring as a condition of bail and was not allowed out of her home to participate in the FSET program.
3. That the April 1, 2015 case closure must be removed and Petitioner's FoodShare reinstated.

**THEREFORE, it is**

**ORDERED**

That the agency reverse the April 2015 closure of Petitioner's FoodShare case. The agency shall take all administrative steps necessary to complete this task within ten days 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

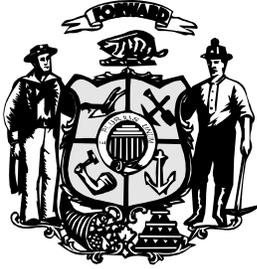
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 22nd day of June, 2015.

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\sMayumi M. Ishii  
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 June 22, 2015.

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