



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/165211

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 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 telephonic hearing was held on May 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 March 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: Virginia Chabrier, Lead ESS
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner applied for FS on or about October 10, 2014.

3. On October 13, 2014 the FS agency issued a FoodShare Employment and Training Program Referral to the petitioner. Exhibit 2. The letter states in part 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.” *Id.* The letter states that her “Begin Month” was October 2014. *Id.* 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.” *Id.*
4. Petitioner enrolled in FSET on December 29, 2014 and an Employability Plan was created for her for FSET. See Exhibit 4.
5. On February 16, 2015 the agency issued a notice of decision to petitioner stating that her FS would end March 1, 2015 because she had used 3 months of time limited benefits (TLBs) 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 October 2014 for FS, she was subject to these new rules.

The problem with this case is that the FSET agency did not show that petitioner was properly notified of her requirements under the FSET program. Petitioner applied for FS in October 2014. The FSET referral letter then was mailed to her on October 13, 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.” Exhibit 2. The letter states that her “Begin Month” was October 2014. *Id.* 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.*” *Id.* (emphasis added).

I find this language within that referral confusing and misleading. 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. This referral letter is telling her conflicting information about how to comply, and states FS benefits will not decrease or end if she does not take part in FSET activities.

Additionally, the agency representatives did not show when she was issued FS in any of the months in question. The agency determined her TLB months as November, December and February, but could not explain why if the referral letter said her start month was October, then why October was not counted as a TLB. No FSET worker was present to provide direct testimony about how the FSET program and its requirements were explained to her in light of the confusing referral letter, or that she was properly noticed of the orientation appointments that she supposedly missed in November and December. (The FSET representative was unable to produce three of these letters showing that petitioner was notified of FSET orientation and enrollment appointments in November and December.) From the evidence presented, petitioner did enroll in FSET at the end of December, and it would make sense then that her TLB should include January, but the agency representatives provided conflicting information about whether or not she was FSET compliant in January. It appears, again from the evidence, that petitioner could not have met FSET requirements in January because she was on court ordered GPS monitoring with a bracelet with restrictions therein that could not have let her participate in FSET.

The *FSET Handbook* states that the FSET agency is responsible for documenting FSET non-participation in assigned activities, while taking into consideration reasons that justify granting good cause. See *FSET Handbook*, §6.6, available online at <http://www.emhandbooks.wisconsin.gov/fset/fset.htm>. Granting good cause allows a non-exempt ABAWD FSET participant to maintain FS eligibility if she remains enrolled in FSET but is temporarily unable to meet the work requirement. *Id.* The *FSET Handbook* also provides:

Good cause may be granted for temporary circumstances beyond the ABAWD's control, such as, but not limited to:

- Illness;
- Illness of another household member serious enough to require the person's presence;
- Unavailability of transportation;
- Unanticipated emergency;
- Employment or work program placement is no longer suitable;
- The participant is terminated from a job or work program assigned activity due to circumstances beyond his or her control;
- The participant is unable to meet participation requirements because they were disenrolled and re-enrolled in FSET in the same month. This may occur if the FSET agency receives a referral update indicating that the participant is FS ineligible, but FS never truly closed.
- An individual is referred to FSET and there is an agency delay in enrollment.

Note: The FSET worker must document in PIN comments when good cause is granted. The description in PIN comments should include the reason and circumstances for granting good cause.

FSET Handbook, §6.6.1.

There is no evidence in the record to suggest that a good cause determination has been made for any month, let alone January or October. However, considering all the facts and circumstances here, I find petitioner's situation justifies granting good cause because it was beyond her control to comply due to the misleading notice and unclear program requirements. Accordingly, she is granted good cause for all three TLB months at issue here.

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 March 1, 2015. Based on the foregoing, I cannot find that it met its burden. I am not, therefore, sustaining the case closure and it must be reversed. Petitioner will need to meet FS requirements in order to continue FS eligibility, which may include beginning the ABAWD/FSET process all over, but the agency must ensure that she is properly advised of same. To that end, petitioner may require a new Employability Plan with a suitable work program placement if her GPS monitoring is still in effect.

CONCLUSIONS OF LAW

1. That the agency has not met its burden to show it correctly sanctioned petitioner for failing to meeting ABAWD work requirements.
2. The petitioner had good cause for FSET nonparticipation in November, December and February, due to inadequate notice.
3. That the March 1, 2015 case closure must be removed and her 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 March 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.

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

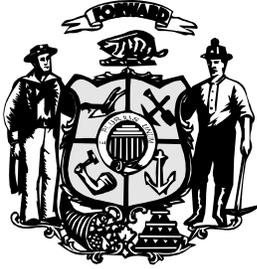
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 27th day of May, 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 May 27, 2015.

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