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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/168420

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 01, 2015, 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 November 24, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's FS because he failed to comply with work program requirements in three months.

A hearing was originally scheduled for September 29, 2015. The petitioner failed to appear for that hearing. On October 2, 2015 the Division of Hearings and Appeals dismissed the petitioner's appeal for failing to appear at the scheduled hearing. On October 13, 2015 the Division of Hearings and Appeals received a Request for a Rehearing from the petitioner. The petitioner stated that he was in the hospital for chronic alcohol abuse, and was unable to attend the hearing. On October 30, 2015 I granted the petitioner's rehearing request. This case was set for a hearing on November 24, 2015. A hearing was held on that scheduled date.

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: Karen Mayer

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County. The petitioner is a one person household.
2. The petitioner is an able-bodied adult without dependents.
3. On February 10, 2015 the agency sent the petitioner a notice stating that he would have to participate in the FoodShare Employment and Training Program (FSET) program. The petitioner had been working at [REDACTED], but his hours had been cut.
4. On February 16, 2015 the agency sent the petitioner a notice stating that an orientation was scheduled for him on February 25, 2015. A worker also left the petitioner a message about the scheduled orientation. The petitioner failed to call or show for the February 25, 2015 orientation.
5. The petitioner did not meet the FSET requirement in February 2015. The agency did not count February as a time limited benefit month because his decrease in hours was first reported in February.
6. On March 2, 2015 the agency sent the petitioner a notice stating that an orientation was scheduled on March 25, 2015. The petitioner attended that orientation and enrolled in the FSET program.
7. In April the petitioner reported two part-time jobs that the agency was unable to verify. He also missed one FSET appointment in April 2015. His FS benefits terminated effective May 1, 2015 for failing to provide income verification.
8. The petitioner did not meet the required FSET hours in March or April 2015.
9. On May 5, 2015 the petitioner reapplied for FS benefits. He again reported employment and income, which the agency was unable to verify. The agency denied this FS application for failure to provide verification on May 18, 2015.
10. On July 7, 2015 the petitioner reapplied for FS benefits. During the interview, the worker explained the FSET program to the petitioner. On July 9, 2015 the agency mailed the petitioner a notice stating that his orientation was scheduled for July 16, 2015. The notice went on to state the program expectations, rules, and consequences for failing to participate in the program.
11. The petitioner rescheduled his July 16, 2015 orientation for July 20, 2015. He failed to show for the rescheduled orientation.
12. On July 22, 2015 the agency sent the petitioner a notice stating that his orientation was scheduled for July 30, 2015. He enrolled in the FSET program on that date.
13. The agency sent the petitioner notices for two scheduled appointments in August 2015. The petitioner failed to show for both scheduled appointments.
14. The petitioner's case manager informed the petitioner what he needed to do in August 2015. She explained that August was his last time limited benefit month, and that if he did not meet the FSET requirements that month he would be sanctioned for 36 months. The petitioner failed to meet the FSET requirements in August 2015.
15. On August 19, 2015 the agency mailed the petitioner a notice stating that his FS benefits would terminate effective September 1, 2015 for failing to meet the FSET requirements in three months March, April, and August.
16. On September 3, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair hearing.

## 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.

### **6.3.2 Non-Exempt ABAWD Participation Requirements**

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

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.

In this case the petitioner has exhausted three time limited benefits months. The petitioner agrees that he did not meet the required 80 hours in March, April, and August. I further note that the petitioner had FS for most of February 2015 and most of July 2015. These months were not complete months, and do not count as time limited benefit months. Nonetheless, the petitioner had almost five full months of FS benefits without meeting the FSET requirements in any of the five months.

As a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

### **3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits**

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;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

The petitioner had issues related to his alcoholism. At the hearing the petitioner testified that he is now clean, sober, and committed to his sobriety. I note that the petitioner may always reapply for FS benefits if he meets one of the FSET exemptions. There is an FSET exemption for a person who is regularly participating in an alcohol or other drug abuse (AODA) treatment or rehabilitation program. (3.17.1.5).

### CONCLUSIONS OF LAW

The petitioner failed to meet the FS work requirement for three time-limited benefit months in a 36 month period, and thus the agency correctly discontinued FS effective September 1, 2015

**THEREFORE, it is** **ORDERED**

That the petition for 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, 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 30th day of November, 2015

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\sCorinne 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 November 30, 2015.

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