



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

FWP/168952

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 25, 2015, 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 telephonic hearing was held on November 16, 2015.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner’s FS for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective October 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: Kelly Kosloske, Lead ESS  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On May 28, 2015 the agency referred the petitioner to FSET as it was informed that her children were no longer in her care.
3. On May 29, 2015 the agency issued a letter to petitioner at her address of record entitled "FoodShare Employment and Training Program Referral". Her begin month was May 2015.
4. On May 29, 2015 the agency issued another letter to petitioner at her address of record entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for June 9, 2015 for an FSET appointment. Petitioner failed to make this appointment.
5. On June 17, 2015 the agency issued another letter to petitioner at her address of record entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for June 19, 2015 for an FSET appointment. Petitioner failed to make this appointment.
6. On June 22, 2015 the agency issued another letter to petitioner at her address of record entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for July 1, 2015 for an FSET appointment. Petitioner failed to make this appointment.
7. On July 2, 2015 the agency issued another letter to petitioner at her address of record entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for July 13, 2015 for an FSET appointment. Petitioner failed to make this appointment.
8. The agency received the FSET appointment notices as returned and undeliverable on various dates in June and July 2015. The agency attempted to call petitioner on May 28, 2015 and July 31, 2015 to inquire about her status, but petitioner did not answer.
9. On August 18, 2015 the petitioner reported a new address to the FS agency.
10. On August 24, 2015 the agency issued a letter to petitioner at the newly reported address entitled "FoodShare Employment and Training Program Referral". Her begin month was still May 2015.
11. On September 16, 2015 the agency attempted to call petitioner to inquire about her status, but petitioner did not answer, and the agency representative left a voicemail message for her.
12. On September 17, 2015 the agency issued a letter to petitioner at her new address of record entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for September 23, 2015 for the FSET appointment. Petitioner failed to make this appointment.
13. Petitioner did not meet the FSET work participation requirements for July, August or September 2015.
14. On September 18, 2015 the agency issued a notice to petitioner at her new address of record stating that her FS was ending on October 1, 2015 because she did not meet the FSET work participation requirements for July, August and September 2015.

### 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.

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 (FS) benefits. See *FS Handbook*

§3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. 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 (TLBs) in a 36-month period. *Id.*

Non-ABAWDs are not subject to time-limited FS benefits (TLBs). The agency defines non-ABAWDs as:

**NON-ABAWD:** A FoodShare applicant or member is determined a non-ABAWD if he or she meets any one of the following criteria, as determined by the IM agency:

- Under age 18\* or age 50\*\* and older;
- Unable to work;
- Residing in a FoodShare household with a child under age 18\*\*\*; or
- Pregnant.

\*Age 18: ABAWD status applies the month following the month the FS recipient or applicant turns age 18.

\*\*Age 50: ABAWD status is lost the first day of the month an ABAWD turns age 50.

\*\*\* Individuals who reside with and are included in the same food unit as a child under age 18 are non-ABAWDs, even if that child is ineligible for FoodShare. See section [3.3.1.1](#) for food unit requirements).

Non-ABAWDs are not subject to time-limited FS benefits (TLBs).

**Note:** Individuals who are coded as out of the home, including children placed in foster care and out of home tax dependents and co-filers, do not make an individual a non-ABAWD.

See *FS Handbook*, §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.

See *FS Handbook*, §3.17.1.5.

An ABAWD meets the ABAWD work requirement by doing one of the following:

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.

*FS Handbook*, §3.17.1.7.

Petitioner appeared at hearing and agreed that she did not receive the appointment notices that were mailed to her address of record at the time they were sent. The agency appeared and testified about the appointment notices that were mailed to her address of record and attempts to reach her by phone. The agency did what it was supposed to do – mail her notices to her address of record on file with the agency. Petitioner described being homeless and not having an address. The problem is that she is the person responsible for providing her address of record to the agency, which she did, and on which the agency relied and mailed her notices. She unfortunately waited until August to provide a new mailing address to the agency, at which time the agency again sent notices to her, and again which she did not respond to. As explained at hearing she could request that the agency use a “general delivery” mailbox through the post office so that she can retrieve her mail if her mailing address is not stable.

Petitioner failed to meet the work requirement, whether it be through FSET or otherwise, and is only allowed to receive 3 full months of TLBs, as she did in July, August and September. Accordingly, I must find that she has exhausted her TLBs and the agency acted correctly in terminating her FS on that basis.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I note that petitioner provided a letter from a doctor at the time of hearing stating that she was unable to work. The agency agreed that it would take the letter and consider her exempt from the ABAWD work requirements as of November, for the next 6 months (as stated on the letter she provided), which would make her again eligible for FS. Petitioner is reminded that she must continue to provide proof to the agency that she is exempt after the 6-month period or otherwise eligible to continue to receive FS.

### **CONCLUSIONS OF LAW**

The agency met its burden to show that it correctly discontinued petitioner’s FS effective October 1, 2015 for failing to meet ABAWD work requirements.

**THEREFORE, it is**

**ORDERED**

The petition for review is hereby 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

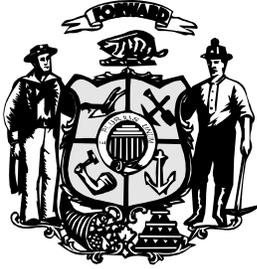
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 24th day of November, 2015

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\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 November 24, 2015.

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