



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/169690

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 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 telephonic hearing was held on November 24, 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 November 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Madeline Rice, 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 and has been a recipient of FS.
2. Petitioner was enrolled in the FoodShare Employment and Training (FSET) program in December 2014.

3. On October 16, 2015 the agency issued a FSET Program Referral to the petitioner. Exhibit 2. It stated that his “Begin Month” was “October 2015”.
4. On November 3, 2015 the agency issued a notice of decision to petitioner stating that his FS would end November 1, 2015 because he 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>.

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.*

The problem with this case is that the agency representatives did not prove how a determination was made that the petitioner did not meet the work requirements in his 3 months of TLBs. First, there was no referral letter showing when he was referred to FSET in 2014 or what his “Begin Month” was determined to be. There seemed to be no disagreement that he was enrolled in December 2014, however. The agency’s testimony was that he did not meet the work requirements in November *and* December 2014, and that those were his first two TLBs. It was not until November 2015 that the agency alleges he had his third TLB. However, the referral notice of October 16, 2015 states his “Begin Month” was October 2015. There was no explanation for what happened with October if that was to be counted as a TLB, except that he was completing all of his ResCare and Job Search activities until November. The FSET representative explained that the FSET agency could not provide him with services in November 2015 however, because he was FS ineligible. The FS agency representative could not explain why he was FS ineligible for November.

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 petitioner’s FS should end November 1, 2015. The contradictory and scant evidence presented does not allow me to 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 November 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 November 1, 2015 closure of Petitioner's FoodShare case for failing to meet ADAWD work requirements in 3 TLBs. 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 30th 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 30, 2015.

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