FH
[redacted]

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
[redacted]
FWP/170078

## PRELIMINARY RECITALS

Pursuant to a petition filed November 9, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services agency in regards to the discontinuance of FoodShare benefits (FS), a telephone hearing was held on December 3, 2015, at Milwaukee, Wisconsin.

No issue remains for determination; the parties agreed upon a stipulated settlement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: [redacted], HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was referred for Food Share Employment and Training enrollment on August 7, 2015; and sent a letter informing her of an enrollment appointment on August 10, 2015.
2. The petitioner enrolled in FSET on August 19, 2015; and she executed at Employability Plan requiring her to perform employment search, work in an unsubsidized job at a temporary agency called [redacted], and attend a class called [redacted].
3. The petitioner attended [redacted] for 20 hours in the last week of August, 2015.

4. Subsequently, the petitioner's Employability Plan was amended on September 17, 2015, requiring her to perform 10 hours of employability search and 10 hours of work for [redacted] each week.

5. Subsequently, the petitioner reported employment search in logs that totaled less than 10 hours per week, and worked for [redacted] periodically, but could not get enough work from [redacted] to meet the 10 hour per week standard in September and October, 2015.

6. On October 19, 2015, the Department issued a Notice to the petitioner informing her that she had failed to participate in FSET in three time limited benefit months and her FS would be discontinued effective November 1, 2015, for this reason.

7. On November 9, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of her FS; benefits were not continued pending the hearing process.

8. The petitioner was informed by FSET personnel to stop coming to FSET in November, 2015, because she had failed to fulfill her FSET obligations in August, September and October, 2015, and had been dis-enrolled and had her FS discontinued.

9. At the hearing held on December 3, 2015, the county and FSET workers and the petitioner reached a stipulated settlement providing that FSET would grant the petitioner good cause for all hours of non-participation in August and November, 2015; treat her as having failed to complete her FSET obligations in two time limited benefit months only (September & October, 2015); rescind the FSET non-compliance discontinuance retroactive to November 1, 2015, and issue all FS to which she was otherwise entitled; and immediately re-enroll her in FSET for December, 2015, with the obligation in her EP to include Employability Search and unsubsidized work at 10 hours per week of each.

10. No issue remains for determination by the administrative law judge.

## DISCUSSION

The parties have agreed upon a stipulated settlement as described in Finding of Fact #9, above. No other issue remains for determination by the administrative law judge. As a side note to the petitioner, she agreed that she violated full compliance with FSET participation in two of her three time-limited benefit months allowed. If she fails again, she will be discontinued again. As explained to her at the conclusion of the hearing, she *must* fully comply in December, 2015, and she should immediately appear for re-enrollment, Employability Plan execution and begin applying for work and performing work **now or she will again risk being discontinued.**

The FSET agency worker was also instructed at the close of the hearing to explain to the petitioner how a person may cure a FSET sanction by working in unsubsidized employment for 80 hours in a month and proving that they did so, to re-request FS in the future *if she becomes discontinued in the future due to FSET non-participation*.

Finally, as a specific side-note to the FSET Program, this simple sanction appeal had a 101 page Summary packet submission. It was the third such submission before this ALJ on December 3, 2015. FSET hearings are anticipated to be high volume simple hearings set for 15 minutes. The agency must take action to meaningfully prepare exhibit submissions suited to the time frame for such hearings providing only the evidence relevant to the hearing issue and agency action. The mere "dumping" of all of the electronic records the FSET agency possesses on an FSET participant is not the contemplated manner of preparing for a fair hearing. The agency must do a better job of tailoring its Summary to the needs of the hearing forum.

## CONCLUSIONS OF LAW

The parties have agreed that the FSET sanction is to be rescinded because the petitioner only failed to fully participate in September & October, 2015, for FSET purposes; and that the agency is to grant her good cause for all hours of non-participation in August & November, 2015, and re-enroll her for December, 2015, forthwith.

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

That the matter is remanded to the county agency and its FSET agents with instructions to: rescind the petitioner's FSET non-participation finding for August, 2015, and grant her good cause for all non-participation hours; reverse and rescind the FSET discontinuance sanction imposed retroactive to November 1, 2015, and issue all FS to which she was otherwise entitled, if any, retroactive to November 1, 2015; amend her FSET case record to show that she did not fully participate in September & October, 2015, time-limited benefit months, and that she had good cause for any and all hours of FSET non-participation in November, 2015; and re-enroll her in FSET for December, 2015, with a new Employability Plan and all obligations to complete employment search and work activities for all of December, 2015. All of these actions shall be completed within 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 Madison,
Wisconsin, this 4th day of December, 2015

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\sKenneth D. Duren, Assistant Administrator
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 December 4, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability