



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FWP- 174643

**PRELIMINARY RECITALS**

On May 26, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Milwaukee Enrollment Services agency regarding FoodShare benefits (FS). The hearing was held on June 29, 2016, at Milwaukee, Wisconsin. The hearing record was held open for one day for a submission from the petitioner’s probation/parole officer, which was received.

The issue for determination is whether the Department correctly discontinued the petitioner’s FS due to his failure to meet Able-Bodied Adult without Dependents (ABAWD) work requirements.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI53703

By:  HSPC Sr.  
Milwaukee Enrollment Services

**ADMINISTRATIVE LAW JUDGE:**

Nancy Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is an unemployed resident of Milwaukee County.

2. The petitioner has been receiving FS as a household of one person since at least June 2015. At the petitioner's periodic case review in July 2015, the Department determined that he was an ABAWD and would have to participate in the work program. On July 30, 2015, the Department mailed a notice, *FoodShare Employment and Training Program Referral*, to the petitioner at his correct mailing address. This notice advised him that he had been referred to the mandatory work program, FSET, unless he was exempt or working at least 80 hours monthly. A person seeking an exemption was directed to fill out the attached *Proof of Work Requirement Exemption* form. Further, the notice declared that without participation, the petitioner would receive FS for only three months out of a 36-month period.
3. The local agency mailed him an *FSET Initial Appointment Scheduled* letter, advising him to appear for his first FSET appointment. He appeared, and adequately participated in the FSET program through October 2015. He then failed to participate during November and December 2015.
4. The petitioner was continuously incarcerated from November 5 through December 30, 2015. He was unable to telephone from the House of Correction for free. The petitioner had no money at the time.
5. Upon discharge on December 30, the petitioner contacted his FSET worker at the time (Mr. [REDACTED]), who was not present at hearing. He advised him of his incarceration, and asked to resume FSET participation.
6. The petitioner did adequately participate in FSET from January into April 2016. He did not participate in May 2016. The petitioner asserts that his nonparticipation in May was caused by inability to obtain bus passes.
7. On May 18, 2016, the Department mailed a notice to the petitioner advising that his FS would be discontinued effective June 1, 2016. The basis for discontinuance was (1) failure to participate in FSET, and (2) expiration of the three-month benefit grace period (November, December, April).
8. The petitioner is not exempt from participation in the FSET work program.
9. The petitioner has not participated in the FSET work program for three months.
10. The petitioner did have good cause for his failure to participate in November and December 2016. He did not have good cause for his failure to participate in April 2016.

### **DISCUSSION**

Effective April 1, 2015, Wisconsin imposed an ABAWD work program requirement statewide. Under ABAWD rules, non-exempt, able-bodied, childless adults must meet ABAWD work requirements in order to continue receiving FS benefits. An ABAWD is a person who is (1) 18 – 49 years old, (2) able to work, (3) not residing in a household with a minor child, and (4) not pregnant. See, *FoodShare Wisconsin Handbook (FSH)*, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner is an unemployed ABAWD person. An ABAWD may be exempt from work requirements under limited circumstances, such as being unfit for employment. None of the exemption criteria were argued or were applicable here. *FSH*, § 3.17.1.5. See also, 7 C.F.R. § 273.7(b)(1).

The requirement that the petitioner enroll in a work program such as FSET, is permissible under federal FS rules. 7 C.F.R. § 273.7(a)(1)(ii). The failure to meet work or work program requirements results in ineligibility after three months of such failure. 7 C.F.R. §§ 273.7(f)(1) and 273.24(b).

The petitioner did miss three months of FSET participation – November, December and April. However, he established a good cause excuse for nonparticipation in November and December, which was incarceration. His incarceration at the House of Correction was verified by email to this Judge by Perchell Simmons, a Probation & Parole Agent. Where a good cause excuse is proffered and verified, no sanction should be imposed. See, *FSET Handbook (FSET)*, <http://www.emhandbooks.wisconsin.gov/fset/fset.htm>, at §6.6. The petitioner did establish that he had “good cause” for missing activities throughout November and December 2015. He did not establish good cause for the April 2016 failure. See also, 7 C.F.R. § 273.24(b)(2).

### **CONCLUSIONS OF LAW**

1. The petitioner, an unemployed ABAWD, failed to timely participate in the FSET program for three months. However, he had good cause for nonparticipation in two of those months.
2. The Department incorrectly discontinued the petitioner’s FS effective June 1, 2016.

**THEREFORE, it is**

**ORDERED**

That the petitioner is remanded to the Department with instructions to amend the petitioner’s TLB clock to show only one month of nonparticipation, and to reinstate the petitioner’s FS benefits effective June 1, 2016. These actions shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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, **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 \_\_\_\_\_ day of July, 2016

\s \_\_\_\_\_  
Nancy Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals

FH

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**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 12, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability