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**TO: Income Maintenance Supervisors  
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W-2 Agencies  
Workforce Development Boards  
Job Center Leads and Managers  
Training Staff  
Child Care Coordinators**

**FROM: Shawn Tessmann, Bureau Director  
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Division of Health Care Access and Accountability**

**DHS OPERATIONS MEMO**

**No: DHS 15-18**

**DATE: 6/12/2015**

<b>FS</b>	<input type="checkbox"/>	<b>MA</b>	<input type="checkbox"/>	<b>BC+</b>	<input type="checkbox"/>
<b>SC</b>	<input type="checkbox"/>	<b>CTS</b>	<input type="checkbox"/>	<b>FSET</b>	<input checked="" type="checkbox"/>

**SUBJECT: Roles and Responsibilities for Fair Hearings Related to FoodShare  
Employment and Training (FSET) Participation**

**CROSS REFERENCE:** FSET Handbook [Chapter 9.5](#); [IMM Chapter 3](#);  
Operations Memos [12-59](#), [14-25](#), [14-27](#) and [14-55](#)

**EFFECTIVE DATE:** Immediately

**PURPOSE:**

The purpose of this memo is to communicate the policy for fair hearings related to FSET, including the roles and responsibilities of Income Maintenance (IM) agencies and FSET agencies.

**BACKGROUND:**

As described in Operations Memos [14-25](#), [14-27](#) and [14-55](#), Wisconsin implemented new eligibility rules to determine Able-Bodied Adults without Dependents (ABAWD) status for FoodShare (FS) applicants and members. These rules went into effect on July 1, 2014, for FS applicants and members residing in the FSET pilot region (Kenosha, Racine and Walworth counties) and on April 1, 2015 statewide.

Non-exempt ABAWDs who do not meet the ABAWD work requirement and have exhausted three months of time-limited benefits (TLBs) may lose FS eligibility. In these cases, it is important that both the IM agency and the FSET agency work together to handle FSET/ABAWD fair hearings. Most other types of fair hearings do not require a joint effort among agencies to respond, so this level of collaboration may require establishing new processes and procedures between IM and FSET agencies in order to ensure all parties are prepared to respond to fair hearings. To assist with this process, this memo communicates the requirements for each agency when preparing for, attending, and taking any necessary follow-up action for an FSET/ABAWD-related fair hearing.

Operations Memo [12-59](#) describes the fair hearing process for appeals related to IM programs, including the functionality of the CARES Worker Web (CWW) Fair Hearings Tracking Tool. The Division of Hearings and Appeals (DHA), the agency handling fair hearings, communicates with IM agencies using the Tracking Tool.

## **POLICY:**

### **FAIR HEARING REQUEST:**

A FoodShare member referred to or participating in FSET has the right to file a fair hearing if he or she disagrees with an action taken by either the IM or FSET agency, including a loss of FS eligibility due to exhausting TLBs, FSET non-participation, or otherwise failing to meet the ABAWD work requirement. The fair hearing is heard before an Administrative Law Judge (ALJ), administered by DHA. The ALJ determines whether or not the actions taken by the agency were correct per federal regulations, state statutes, and program specific policies. The burden of proof is on the agency that took adverse action against the member.

Fair hearing requests may be made in the following ways:

- Received by the (IM and/or FSET) agency in writing,
- Received by the (IM and/or FSET) agency verbally, or
- Received by DHA in writing.

The FSET worker must provide the participant with the Request for Fair Hearing form upon request. The FSET worker must also attempt to reach the IM agency to request that the FoodShare notice be explained to the member. The Request for Fair Hearing form is available at <http://www.doa.state.wi.us/Divisions/Hearings-and-appeals/request-hearing>.

If an IM or FSET agency receives a verbal FS or FSET hearing request, the agency must assist the member by entering his or her verbal information about the appeal onto the Request for Fair Hearing form. If the member is at the agency and available to sign the form without delaying the submittal to DHA, the agency must request that the member sign the completed form. If the member is not at the agency or is not readily available to sign the form, the agency must forward the completed form to DHA without the member's signature.

All hearing requests must be forwarded to DHA. Hearing requests received by an agency verbally or in writing must be scanned and emailed or faxed to DHA the same business day it is received. DHA's email address is [DHAMail@wisconsin.gov](mailto:DHAMail@wisconsin.gov). DHA's fax number is (608) 264-9885. The agency must document in case comments that the request has been sent.

►**Note:** Members are not required to use the Request Fair Hearing Form in order to request a fair hearing. A member could instead write a letter explaining that he or she disagrees with an action taken on their case. If an IM or FSET agency receives a letter of this nature from a member, the agency must forward it to DHA as a hearing request as written.

### COORDINATION BETWEEN IM AND FSET AGENCIES:

DHA will open an appeal file upon receiving the fair hearing request and will send the appeal information through the CWW Fair Hearings Tracking Tool to the IM agency administering the member's FoodShare case. Generally, DHA has limited information and is only able to initially identify the broad category of the appeal (e.g. FoodShare, Health Care, or Child Care). DHA cannot determine if an appeal is related to FSET, so it is the responsibility of the IM agency to identify if the appeal is related to FSET and to include this information in the initial summary and detailed summary. The IM agency should code FSET-related appeals as "FWP – FoodShare Work Program Sanction" in the initial summary. The IM agency must notify the FSET agency prior to the submission of the initial summary that an FSET participant has requested a fair hearing and that the action under appeal is related to FSET. The IM agency must share with the FSET agency a copy of the FSET participant's written request for a fair hearing. Once DHA sends out the hearing notice detailing the date, time, and location of the hearing, the IM agency must also share this information with the FSET agency. DHA will not directly contact the FSET agency.

Communication and coordination between the IM agency and the FSET agency is important to facilitate this process. FSET agencies must comply with requests from the IM agency to provide information and attend fair hearings in cases where FoodShare eligibility was impacted by FSET agency action or inaction. The following paragraphs describe this coordination process. An "at a glance" chart of the process and timeframes can be found in Appendix A.

As stated in Operations Memo [12-59](#), the initial summary is due to DHA within 5 calendar days of the Request Received date from DHA in the Tracking Tool. The Initial Summary Page allows a worker to complete basic information about an appeal. This includes the case/RFA/ACCESS number related to the appeal, the program under the appeal, the reason for the appeal and the effective date of adverse action. As noted above, IM must notify the FSET agency of the fair hearing prior to the submission of the initial summary. This will not occur more than 5 calendar days after the request was received by DHA.

The detailed summary is due to DHA within 10 calendar days of the Request Received date from DHA. The detailed summary must include the following information in order to be considered complete:

- A general timeline of all actions taken on the case that resulted in the appeal, including the dates of action taken by the agency and the dates the action became effective.
- Policy citations with an explanation of how the agency complied with the policy.
- Description of corrective actions taken to remedy any errors made on the case.
- Copies of applicable documentation such as notices of decision.

The IM agency should work with the FSET agency to gather the appropriate information to complete the initial summary and the detailed summary. The IM and FSET agencies should work together to determine internal processes for sending and receiving information related to fair hearings, in particular to identify the designated individuals responsible for receiving these fair hearings communications within both the FSET and IM agencies. Additional documentation from the IM and FSET agencies, such as reminder letters, verification and screen shots of

pages in CWW can be submitted at a later date as part of the hearing preparation. All such exhibits must be received by DHA no later than 48 hours prior to the hearing. The IM agency is responsible for submitting the required information in the Tracking Tool on behalf of both the IM and the FSET agencies.

➤**Note:** Any information that is submitted to DHA must also be sent to the member or member's representative.

Similar to non-FSET fair hearing requests, it is expected that the IM agency will contact the member in order to gather more information and determine if the issue can be resolved and the appeal withdrawn prior to the fair hearing. Answering the member's questions and explaining the agency's reasoning may result in the member choosing to withdraw the appeal. FSET agencies should participate in these discussions to explain the FSET agency actions. If the member indicates that s/he intends to withdraw the appeal, the worker must provide the petitioner with the Withdrawal Request Form. A Withdrawal Request Form pre-filled with the appeal information can be found in the Tracking Tool under the specific appeal. A blank Withdrawal Request Form can be found at <http://www.doa.state.wi.us/Documents/dha/WFS/WFSVW.pdf>. Once the member submits the written withdrawal request to DHA, DHA will send the member and the IM agency a decision notice stating that the appeal has been withdrawn. The IM agency must share this decision notice with the FSET agency to notify them that the appeal has been withdrawn.

Both the IM agency and the FSET agency are required to attend the fair hearing and be prepared to explain the details of the case and the relevant policy. It is recommended that the IM agency representative and the FSET agency representative who will be attending the hearing have a pre-hearing preparation meeting together to review the relevant case information.

At least two business days prior to the hearing, the IM agency must contact the ALJ to notify him or her that representatives from both the IM agency and the FSET agency will be attending and to provide the names and the phone number(s) at which to reach the representatives for the hearing.

Following the hearing, the ALJ will issue a decision notice. The IM agency must share this decision notice with the FSET agency. If the decision is Dismissed, no further action related to this appeal is required from the IM or the FSET agency. If the decision is Remanded, the IM agency or the FSET agency will need to take the action specified in the decision by the date given. Depending on the action needed, this might require follow-up by the IM agency, the FSET agency, or both. The IM agency will then need to complete the Certificate of Administrative Action section in the Tracking Tool and submit to DHA supporting documents showing proof of the corrective action, such as a new positive notice of decision. The IM agency and the FSET agency must coordinate to ensure that the corrective action is taken and the appropriate supporting documents are submitted.

As with other IM fair hearings, DHS receives copies of the FSET fair hearing decisions and will be monitoring these quarterly. DHS will address any issues with IM and FSET agencies, if needed.

### **CARES:**

There are no changes to CARES at this time.

**CONTACTS:**

BEPS CARES Information & Problem Resolution Center

\*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – SeniorCare, CTS – Caretaker Supplement, FSET – FoodShare Employment and Training.

DHS/DHCAA/BEPS/RW

**APPENDIX A: FSET Fair Hearing Process at a Glance**

<b>Date of Action</b>	<b>Action Required</b>	<b>Agency Responsible</b>
Same business day request for fair hearing received.	Email or fax the member's request for a fair hearing to DHA.	IM or FSET agency, depending on where the member submits the request.
Within 5 calendar days of the Request Received Date from DHA.	Notify the FSET agency of the appeal.	IM agency.
Within 5 calendar days of the Request Received Date from DHA.	Submit the initial summary to DHA.	IM agency.
The IM agency must attempt to contact the member within 10 calendar days of the Request Received Date from DHA.	Contact the member to gather more information and determine if appeal can be withdrawn.	IM agency.
Within 10 calendar days of the Request Received Date from DHA.	Prepare and submit the detailed summary to DHA.	IM agency, with assistance from the FSET agency to gather relevant information.
Agreed upon time prior to the hearing.	Hold a pre-hearing preparation meeting.	IM and FSET agencies.
No later than 2 business days prior to the hearing date.	Inform the ALJ who from the IM and FSET agencies will attend the hearing.	IM agency, with assistance from the FSET agency to identify the FSET agency representative.
Must be received by DHA no later than 48 hours prior to the hearing date.	Submit additional relevant documentation (i.e. evidence) to DHA.	IM agency, with assistance from the FSET agency to gather relevant documentation.
Hearing date.	Attend the hearing.	IM and FSET agencies.
Due date listed in the decision notice.	Take the action ordered in hearing decision, if applicable.	IM or FSET agencies, depending on the action required.