



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/170049

PRELIMINARY RECITALS

Pursuant to a petition filed November 11, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 03, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner’s FS benefits 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: Belinda Brown
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On April 1, 2015, the Petitioner submitted an application for FS benefits. He reported no income or employment, no school enrollment, no expenses.

3. On April 2, 2015, the agency issued a Notice of Decision to the Petitioner informing him that he would receive \$194/month in FS benefits effective April 1, 2015.
4. On April 2, 2015, the agency referred the Petitioner to the FSET program. A notice was issued to the Petitioner informing him of the referral. The notice also informed him that if he is exempt, he must provide proof of an exemption.
5. On April 7, 2015, the agency issued an appointment notice to the Petitioner for an initial FSET appointment on April 10, 2015. The Petitioner attended the appointment and was enrolled in FSET on April 10, 2015.
6. On April 27, 2015, the Petitioner submitted a written statement that he participates in an AODA treatment program. The agency determined the Petitioner was exempt from FSET.
7. On August 19, 2015 and September 2, 2015, the agency contacted the Petitioner to complete a FS renewal. He reported a household size of one, no employment, no school enrollment, homeless, no income.
8. On August 20, 2015, the agency referred the Petitioner to the FSET program. A notice was issued to the Petitioner informing him of the referral. The notice also informed him that if he is exempt, he must provide proof of an exemption. Petitioner did not provide verification of an exemption.
9. On October 19, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would end on November 1, 2015 due to Petitioner using three months of time-limited benefits (April, May and October, 2015) without meeting a work requirement.
10. Petitioner was incarcerated during the month of October, 2015. He did not meet work requirements.
11. On November 11, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.

Exemptions from the FSET work requirement are explained as follows in the FSET Handbook:

6.2.2 Exempt ABAWD

A FoodShare member is an exempt ABAWD if he or she is an ABAWD who meets at least one of the following criteria, as determined by the IM agency:

- Determined unfit for employment, which includes someone who is:
- Receiving temporary or permanent disability benefits from the government or a private source;
- Mentally or physically unable to work, as determined by the IM agency;
- Verified as unable to work by a statement from a health care professional or a social worker.
- Receiving Unemployment Compensation (UC) or has applied for UC and is complying with UC work requirements;

- Regularly participating in an alcohol or other drug abuse (AODA) treatment or rehabilitation program;
- A student of higher education and is otherwise eligible for FoodShare, see the FoodShare Handbook section 3.15.1;
- Is a high school student 18 years of age or older, attending high school at least half-time;
- Primary caregiver of a dependent child under age 6 or an incapacitated person;
- Receiving transitional FoodShare benefits; or
- Meeting the ABAWD work requirement outside of FSET through work and/or other allowable work program participation.

Exempt ABAWDs are not subject to TLBs during months in which they have a verified exemption. Individuals that have a pending exemption may be referred as non-exempt ABAWDs. ABAWDs may gain or lose exemptions for a variety of reasons.

Exempt ABAWDs may participate voluntarily in FSET and are referred to FSET only upon their request. They do not need to participate in FSET in order to meet the ABAWD work requirement.

In this case, the agency concedes that the Petitioner submitted verification of participation in an AODA treatment program on April 27, 2015. The agency concedes that the Petitioner was exempt from FSET as a result. Despite the exemption, the agency asserts that May, 2015 was the Petitioner's second time-limited benefit month because he did not complete work requirements for May. The agency did not present a satisfactory explanation why May should be counted as a time-limited benefit month when the agency determined the Petitioner to be exempt from FSET on April 27, 2015.

At the time of the Petitioner's FS renewal application in August and September, he was notified of the need to submit verification of an exemption from the FSET program. Petitioner's previous exemption expired at the end of the initial 6 month certification period in September, 2015. Petitioner did not submit a new verification. It is undisputed that the Petitioner was incarcerated during the month of October, 2015. He did not meet work requirements. Incarceration is not considered an exemption or good cause for non-participation in FSET. FSET Handbook, § 6.6.1. Therefore, the agency properly determined that Petitioner used a second time-limited benefit month in October, 2015.

Because the Petitioner was exempt from FSET for the period of May – September, 2015, the agency should not have counted May, 2015 as a time-limited benefit month. I conclude the agency should not have discontinued the Petitioner's FS benefits effective November 1, 2015 on the grounds that he had used three months of time-limited benefits.

CONCLUSIONS OF LAW

The agency should not have considered May, 2015 as a time-limited benefit month for the Petitioner. Therefore, it should not have discontinued his FS benefits effective November 1, 2015 based on using three time-limited benefit months.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind its determinations that May, 2015 was a time-limited benefit month for the Petitioner. The agency must take all administrative steps necessary to review and re-determine the Petitioner's eligibility for FS effective November 1, 2015 based on Petitioner having used only two time-limited benefit months. The agency

shall issue a new Notice of Decision to the Petitioner and shall issue any FS supplements to which the Petitioner is entitled. 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.

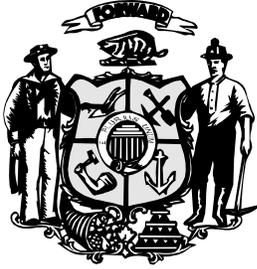
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 4th day of January, 2016

\sDebra Bursinger
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 January 4, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability