



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/170194

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 25, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly ended Petitioner's FoodShare 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: Pamela Hazley, HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On June 17, 2015, the agency sent the Petitioner a notice, advising him that his FoodShare benefits would be ending effective July 1, 2015, because he had not completed a renewal. (Exhibit 6, pgs. 12-16)

3. On July 14, 2015, the Petitioner called the agency to inquire about his benefits. He completed a renewal / reapplication at that time. (Exhibit 6, pg. 8)
4. On July 15, 2015, the agency sent the Petitioner a letter, referring him to the FoodShare Employment and Training (FSET) program and incorrectly advising him that his time limited benefits were beginning in July 2015. (Exhibit 6, pgs. 23-26)
5. Petitioner's time limited benefits began in August 2015. (Exhibit 7, pg. 9)
6. On July 15, 2015, the FSET Office sent the Petitioner a notice, advising him that it scheduled an appointment for him on July 23, 2015. (Exhibit 7, pg. 16)
7. On July 27, 2015, the FSET Office sent the Petitioner a notice, advising him that it scheduled an appointment for him on August 4, 2015. (Exhibit 6, pg. 14)
8. On August 5, 2015, the FSET Office attempted to contact the Petitioner and left a message with a woman identifying herself as the Petitioner's grandmother. (Exhibit 6, pg. 6)
9. On August 6, 2015, the FSET Office sent the Petitioner a notice, advising him that it scheduled an appointment for him on August 13, 2015. (Exhibit 7, pg. 12)
10. On August 17, 2015, the FSET Office sent the Petitioner a notice, advising him that he had an appointment on August 25, 2015. (Exhibit 7, pg. 10)
11. The August 17, 2015 letter was returned to the FSET office unopened, with a notation that the letter was not picked up within 30 days of delivery. (Exhibit 7, pg. 6)
12. On August 25, 2015, the FSET office contacted the Petitioner and advised him that he missed his appointment. The FSET office advised the Petitioner that it would schedule another orientation date for him. (Exhibit 7, pg. 6)
13. On August 26, 2015, someone at the FSET office decided it would not schedule an appointment for Petitioner, after all.
14. On October 19, 2015, the agency sent the Petitioner a notice, advising him that his benefits would be ending effective November 1, 2015, because he used up his time limited benefits. (Exhibit 6, pgs. 32-35)

DISCUSSION

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective April 1, 2015. *Id.*

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 benefits. *FSH §3.17.1.1* 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 in a 36-month period. *Id.*

A person is considered a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

FSH §3.17.1.4

An ABAWD may be exempt from work requirements if the person is:

1. Determined unfit for employment which includes:
 - a. Receiving temporary or permanent disability benefits
 - b. Mentally or physically unable to work, as determined by the IM agency
 - c. Verified as unable to work by a statement from a health care professional or a social worker.
2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
5. A high school student 18 years of age or older, attending high school at least half time;
6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Receiving Transitional FS benefits; or
8. Meeting the ABAWD work requirement.

FSH §3.17.1.4

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.

FSH, §13.17.1.7.

The Petitioner did not dispute the fact that he is an able bodied adult without dependents. The Petitioner did not dispute the fact that he missed all of the appointments that the FSET office scheduled for him. It is undisputed that the Petitioner was not working 80-hours per month. It is also undisputed that the Petitioner did not keep his appointments with the FSET office.

Petitioner appears to be claiming that he had good cause for his missed appointments, because he was not receiving the notices.

Under section 6.6.1 of the *FoodShare Employment and Training Handbook (Release 15-01)*, it states, “Good cause may be granted for temporary circumstances beyond the ABAWD’s control.” That section lists some examples of good cause reasons for non-participation, including when, “an individual is referred to FSET and there is an agency delay in enrollment.” Section 6.6.1 also states that the list is not exhaustive. *See also Ops Memo 14-27 – Amended 5/18/15.*

The notices were mailed to the Petitioner at the correct address at the Coggs Building’s post-office box.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362

(1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

There is no evidence, beyond the Petitioner's testimony, that he did not receive the notices dated, July 15, July 25, or August 6, 2015. As such, it is presumed that he received the notices.

The Petitioner testified that he sometimes checks his mail twice a month, but usually checks it twice per week. However, the record indicates that the Petitioner did not pick up the notice dated August 17, 2015, within 30-days, so it was returned to the FSET office. So, Petitioner's claim that he was checking his mail on a regular basis is highly questionable.

Petitioner has provided no reasonable explanation for his failure to check his mail on a frequent and regular basis. As such, there is no evidence that circumstances beyond the Petitioner's control prevented him from receiving notice of his appointments or keeping them. Accordingly, it is found that the Petitioner did not have good cause for his failure to participate in the FSET program in August 2015.

The PIN Comments (Exhibit 7, pg. 6) indicates that someone told the Petitioner on August 25, 2015, that his intake appointment would be rescheduled and that the agency would be mailing him a new notice. However, the the next day, someone else decided that the intake appointment would not be rescheduled. There is no evidence that anyone advised the Petitioner of this fact and no evidence that the FSET office ever mailed the Petitioner anything after the August 17, 2015 notice. So, the Petitioner was left hanging.

The Petitioner has no control over the actions of the FSET Office. The apparent miscommunication between FSET workers and the lack of notice to the Petitioner regarding the FSET Office's intentions, constitute an agency delay in enrolling the Petitioner in the FSET program. Accordingly, I am finding good cause for Petitioner's non-participation in September and October 2015.

The agency should note, that this, in no way, means that the Petitioner met the ABAWD requirements since October 31, 2015. The agency will have to make a determination regarding that issue and if Petitioner disagrees with that determination, he will have to file a new appeal.

CONCLUSIONS OF LAW

The Petitioner used one month of his time limited benefits in August 2015, but not in September 2015 and October 2015. As such, the agency did not correctly end his benefits in November 2015.

THEREFORE, it is

ORDERED

That the agency reinstate the Petitioner's FoodShare benefits, effective November 1, 2015. The agency shall take all administrative steps to complete this task within ten days 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.

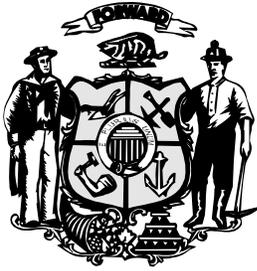
APPEAL TO COURT

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 1st day of March, 2016.

Mayumi M. Ishii
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 March 1, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability