



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/170270

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 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 January 14, 2016, at Milwaukee, Wisconsin. The record was held open post-hearing for the Petitioner to provide additional evidence. On January 26, 2016, the Petitioner provided additional information and the record was closed.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits effective December 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: Katherine May
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 # [redacted]) is a resident of Milwaukee County.
2. On August 20, 2015, the Petitioner completed a renewal for FS benefits.

3. On September 3, 2015, the agency issued a notice of FSET referral to the Petitioner. It informed the Petitioner that she was being referred to the FSET program and that she would receive three months of time-limited FS benefits unless she meets FS work requirements. She was informed that September, 2015 would be her first time-limited benefit month. The notice also contained a form to be completed if the Petitioner claimed an exemption from the FSET program.
4. On September 4, 2015, the FSET agency attempted to contact the Petitioner to schedule an orientation appointment. A message was left for the Petitioner. An appointment letter and email were issued to the Petitioner advising her of an orientation appointment on September 14, 2015 at 9:00 a.m.
5. Petitioner did not appear for the September 14, 2015 appointment. The FSET agency attempted to contact the Petitioner to reschedule.
6. On September 16, 2015, the agency issued an appointment letter for September 24, 2015 at 1:00 p.m. Petitioner did not appear for the appointment.
7. On September 28, 2015, the agency issued an appointment letter for October 6, 2015 at 1:00 p.m. Petitioner did not appear for the appointment.
8. On October 8, 2015, the agency issued an appointment letter for October 15, 2015 at 1:00 p.m. The Petitioner did not appear for the appointment.
9. On October 16, 2015, the agency attempted to contact the Petitioner to reschedule her orientation appointment.
10. On November 18, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she would no longer be enrolled in the FS program effective December 1, 2015 due to using 3 months of time-limited benefits without meeting work requirements.
11. On November 25, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals. In her appeal letter, the Petitioner stated that she has been working with a disability rehab program in the [REDACTED] ([REDACTED]).
12. On November 25, 2015, the FSET agency issued a Notice of Proof Needed to the Petitioner requesting verification of an FSET work exemption. The due date for the verification was December 7, 2015. The Petitioner provided no verification by the due date.
13. At the hearing, the Petitioner provided verification of authorizations from the [REDACTED] indicating that she was working with [REDACTED] from May 14, 2015 – June 5, 2015 and from June 23, 2015 – June 30, 2015.
14. On January 26, 2016, Petitioner submitted a letter dated January 22, 2016 from [REDACTED] that states: “This letter is to confirm that [Petitioner/DOB] is seeking employment with assistance from [REDACTED]”

### 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.

#### 6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time

period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. FoodShare Wisconsin Handbook, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the FSET Handbook, as follows:

#### 6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

#### 6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

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

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see FoodShare Wisconsin Handbook at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. FoodShare Wisconsin Handbook, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. Id., §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS after meeting the requirement for 30 days). Id., §3.17.1.11.

A person can be exempt from the program if he is unfit for employment, that is, he is unable to work as evidenced by a statement by a health care professional or social worker. Id., §3.17.1.5. An individual is required to submit verification of the exemption:

## 3.17.1.6 Verification of ABAWD Status and Exemptions from Time-Limited FoodShare

Verification of Non-ABAWD and Exempt ABAWD status is necessary in order to lift the three month time limit on FS benefits. Non-ABAWD and Exempt ABAWD status may be verified in any of the following ways:

- Agency form,
- Statement from healthcare, social worker, or AODA professional.
- Employer form/paystub/taxes/EVF,
- Upon receipt by using data exchanges,
- By using information known to the agency
  - This includes in-person agency verification of a visibly obvious ABAWD status or exemption that the member has reported, such as pregnancy or inability to work due to a temporary or permanent health condition.
- Collateral contact, or
- Other acceptable written statement.

As long as an exemption exists for part of a month, the individual is exempt for the entire month. *An exemption will not be applied until it is verified*, so an ABAWD with a pending exemption will receive TLBs until the verification is received.

*The effective date of an exemption is the first of the month the exemption was reported or has occurred, whichever is later, as long as verification is provided timely.* If verification is due in the month following the month it was reported, the exemption is effective back to the first of the month it was reported as long as verification is received timely. If verification is received after the due date, the exemption is applied the first of the month in which verification is received. The FoodShare Clock Page may need to be adjusted once verification of an exemption is provided. (3.17.1.14)

Id. § 3.17.1.6.

In this case, the Petitioner did not report a possible exemption until November 25, 2015. No verification was provided until the hearing on January 14, 2016. That verification only applied to May and June, 2015. The letter from █████ submitted by the Petitioner post-hearing contains no dates to verify that the Petitioner met an exemption from FSET for September, October, November or December, 2015. Because the Petitioner never provided verification that she met an exemption during the months of September – December, 2015, I conclude that the agency properly discontinued the Petitioner’s FS benefits effective December 1, 2015 based on using three time-limited benefit months.

### CONCLUSIONS OF LAW

The agency properly discontinued the Petitioner’s FS benefits effective December 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the Petitioner’s appeal 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**

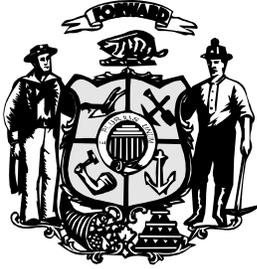
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 15th day of February, 2016

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\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 February 15, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability