



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/170295

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 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 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits effective October 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: Pang Thao Xiong
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 June 16, 2015, the Petitioner completed a FS renewal at the agency. At that time, he was referred to the FSET program. He was provided with written information regarding the FSET

program. On June 17, 2015, the agency issued a notice of referral to the Petitioner at his reported mailing address.

3. On June 17, 2015, the agency issued a notice to the Petitioner at his reported mailing address informing him of an initial FSET appointment on June 24, 2015. On June 26, 2015, the agency issued a notice to the Petitioner at his reported mailing address informing him of an initial FSET appointment on July 6, 2015. On July 8, 2015, the agency issued a notice to the Petitioner at his reported mailing address informing him of an initial FSET appointment on July 16, 2015. On July 20, 2015, the agency issued a notice to the Petitioner at his reported mailing address informing him of an initial FSET appointment on July 28, 2015. Petitioner did not appear for any of the initial FSET appointments.
4. Petitioner received FS benefits in July, August and September, 2015 and did not meet any FSET work requirement in those months.
5. On September 18, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would end effective October 1, 2015 because he had used three months of time-limited benefits without meeting a work requirement.
6. On November 24, 2015, the Petitioner filed a request for a hearing 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.

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. Ibid., §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). Ibid., §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. FoodShare Wisconsin Handbook, §3.17.1.5.

In fact, the FSET Handbook, at section 3.5.2, specifically states in this failure to enroll situation, as follows:

In order for a non-exempt ABAWD to meet the work requirement through FSET participation and maintain ongoing FS benefits after the TLB month, s/he must be enrolled and fully participating in FSET by the 10th day of the third TLB month. The FSET worker should document in PIN comments information relating to each contact that is attempted.

In this case, the agency testified and produced evidence to demonstrate that it sent numerous notices to the Petitioner's mailing address informing him of initial FSET appointments. Petitioner testified that he did not receive the notices though he conceded that the notices were sent to his mailing address. He stated that he did not check his mailbox because he was out-of-state. He also testified that he was told that mail in his agency mailbox was disposed of after 7 days. The agency representatives testified that this is not accurate.

The Petitioner was responsible for checking his mail and for getting to scheduled FSET appointments. He failed to attend the initial appointments to get enrolled. He produced no evidence that he met the work requirements of the FSET program in July, August or September, 2015. Based on the evidence, I conclude the agency properly discontinued the Petitioner's FS benefits effective October 1, 2015 based on the Petitioner using three months of time-limited benefits without meeting FSET work requirements.

CONCLUSIONS OF LAW

The agency properly discontinued the Petitioner's FS benefits effective October 1, 2015 based on the Petitioner using three months of time-limited benefits without meeting FSET work requirements.

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.

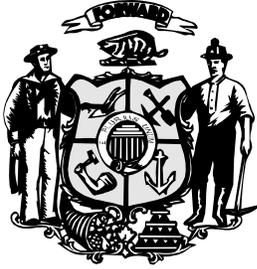
APPEAL TO COURT

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 19th 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 19, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability