



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171017

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 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 telephonic hearing was held on January 28, 2016.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FS for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective January 1, 2016.

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: [Redacted] IM Specialist Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On September 30, 2015 petitioner applied for FS.

3. On October 2, 2015 the agency issued a FSET referral letter to petitioner. See Exhibit 7. His “begin month” was October.
4. On October 2, 2015, the agency issued a letter to petitioner entitled “Action Required: FSET Initial Appointment Scheduled”. See Exhibit 2. The letter stated that the petitioner was scheduled for October 12, 2015 for an FSET appointment. Petitioner failed to make this appointment.
5. On October 14, 2015 the agency issued a letter to petitioner entitled “Action Required: FSET Initial Appointment Scheduled”. See Exhibit 3. The petitioner was scheduled for October 22, 2015 for an FSET appointment. Petitioner failed to make this appointment.
6. On October 27, 2015 the agency issued another letter to petitioner entitled “Action Required: FSET Initial Appointment Scheduled”. See Exhibit 4. The petitioner was scheduled for November 3, 2015 for an FSET appointment. Petitioner failed to make this appointment.
7. On November 5, 2015 the agency issued another letter to petitioner entitled “Action Required: FSET Initial Appointment Scheduled”. See Exhibit 5. The petitioner was scheduled for November 12, 2015 for an FSET appointment. Petitioner failed to make this appointment.
8. On December 18, 2015 the agency issued a notice of decision to petitioner stating that his FS would end January 1, 2016 because he had used 3 months of time limited benefits (TLBs) without meeting a work requirement during those 3 months. See Exhibit 1.

### **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. As part of Wisconsin’s 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required 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.

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 (FS) benefits. See *FS Handbook* §3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. 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 (TLBs) in a 36-month period. *Id.*

A person is considered an ABAWD, if that person does not meet the NON-ABAWD status:

**NON-ABAWD:** A FoodShare applicant or member is determined a non-ABAWD if he or she meets any one of the following criteria, as determined by the IM agency:

- Under age 18\* or age 50\*\* and older;
- Unable to work;
- Residing in a FoodShare household with a child under age 18\*\*\*; or
- Pregnant.

\*Age 18: ABAWD status applies the month following the month the FS recipient or applicant turns age 18.

\*\*Age 50: ABAWD status is lost the first day of the month an ABAWD turns age 50.

\*\*\* Individuals who reside with and are included in the same food unit as a child under age 18 are non-ABAWDs, even if that child is ineligible for FoodShare. See section [3.3.1.1](#) for food unit requirements).

Non-ABAWDs are not subject to time-limited FS benefits (TLBs).

**Note:** Individuals who are coded as out of the home, including children placed in foster care and out of home tax dependents and co-filers, do not make an individual a non-ABAWD.

...

*See FS Handbook, §3.17.1.4.*

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

1. Is determined unfit for employment, which includes someone who is:
  - a. Receiving temporary or permanent disability benefits from the government or a private source;
  - 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 social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
6. Is a full-time high school student age 18 or over;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

*See FS Handbook, §3.17.1.5.*

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.

*FS Handbook, §3.17.1.7.*

If not exempt from work requirements each FS household member must register for work at the time of application and review. *FS Handbook, §3.16.1.4.*

Petitioner did not deny his lack of participation in FSET, but testified that he did not receive some of the written notices that were mailed to him at his address of record. The FSET agency appeared and testified about the referral and appointment notices that were mailed to his address of record, as well as follow ups with phone calls. The phone calls made by the agency were never able to connect with the petitioner as the message when the number was called said the phone was disconnected. The petitioner testified that he probably had a new telephone number that he did not report to the agency. The FSET agency and the county have met their burden of proof to show that they sent the relevant notices to petitioner's correct address of record.

Petitioner also testified at hearing that he had been working during the TLBs and in AODA. He agreed neither of these facts were reported to the agency. Petitioner was allowed to provide proof of those facts post-hearing however. Unfortunately for petitioner, the work information shows that he only worked a total of 55.50 hours for November. In order to meet the work requirement, he must work a minimum of 80 hours, or cooperate with FSET, or both. *See FS Handbook*, §3.17.1.1. Further, the AODA information shows that he was discharged on December 7, 2015 because he was no longer compliant with the AODA attendance policy, as he only attended 2 appointments in November 2015. The FS policy states that he must be **regularly participating** in an AODA treatment program. *See FS Handbook*, §3.17.1.5 (emphasis added). Since he was not regularly participating he would not have met that requirement either. Finally, petitioner testified that he was unaware of his reporting requirements. However, when he applied for FS, his reporting requirements were set forth, his exemptions from the work requirement were set forth, and signature on the application is checked for acknowledging his rights and responsibilities. See Exhibit 8.

In the end, the agency did what it was supposed to do – mail the notices to his address of record on file with the agency. It attempted to follow up with phone calls, but the petitioner changed his number and did not advise the agency. The agency issued his FS for the three TLBs and he failed to meet the work requirement. Accordingly, I must find that he has exhausted his TLBs and the agency acted correctly in terminating his FS.

### CONCLUSIONS OF LAW

The agency met its burden to show that it correctly discontinued petitioner's FS for failing to meet ABAWD work requirements effective January 1, 2016.

**THEREFORE, it is**

**ORDERED**

The petition for review herein 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

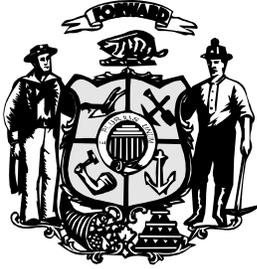
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 12th day of February, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 12, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability