



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/171074

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2016, 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 February 04, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner’s FoodShare benefit, effective December 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Income Maintenance Specialist Advanced
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 or about July 17, 2015, the Petitioner completed an on-line ACCESS application for FoodShare benefits. (Exhibit 4, pg. 12)

3. On August 27, 2015, the agency sent the Petitioner a referral to the FSET program, incorrectly indicating that his time limited benefits were beginning in August 2015. (Exhibit 4, pg. 16)
4. Petitioner's time limited benefits began in September 2015. (Exhibit 5, pg. 9)
5. On August 31, 2015, the FSET office sent the Petitioner an appointment letter, directing him to report to the office on September 3, 2015. (Exhibit 5, pg.43)
6. On September 3, 2015, the Petitioner signed an employment plan requiring him to work ten hours per week and to engage in Customized Skills Training ten hours per week. (Exhibit 5, pg. 21)
7. On October 21, 2015, the Petitioner signed an employment plan requiring him to work 12 hours per week and to engage in Job Retention Services one hour per week. (Exhibit 5, pgs. 29-30)
8. On October 26, 2015, the agency sent the Petitioner a notice of proof needed requesting verification of his employment by November 4, 2015. (Exhibit 4, pgs. 22 and 23)
9. On or about November 5, 2015, the Petitioner provided some check stubs. (Exhibit 4, pgs. 14-15)
10. On November 9, 2015, the agency sent the Petitioner a notice, indicating that his benefits would be ending, effective December 1, 2015, because he did not provide the requested proof. (Exhibit 4, pg. 20-21)
11. On or about November 16, 2015, the Petitioner submitted an Employer Verification of Earnings Form, indicating he was working 18 hours per week at \$9.50 an hour. (Exhibit 4, pg. 13)
12. In October 2015, the Petitioner worked 48 hours. (Exhibit 2)
13. In November 2015, the Petitioner worked 60 hours. (Exhibit 2)
14. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 4, 2016. (Exhibit 1)
15. On January 6, 2016, the agency sent the Petitioner a notice, indicating that there would be no changes to his Foodshare benefits.

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.

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FSH, §13.17.1.7.

In the case at hand, the Petitioner does not dispute the fact that he meets the definition of an Able Bodied Adult Without Dependents. Petitioner does not dispute the fact that he did not meet the 80-hour per month ABAWD work requirement in September 2015. However, the Petitioner disputes the assertion that he did not do what was required in October and November 2015.

At the hearing, the agency made no allegation and produced no evidence that the Petitioner failed to comply with the non-work portion of his employment plan. The issue in dispute was whether the Petitioner worked the required number of hours, which was 48 hours per month. Looking at Exhibit 2, it is clear that the Petitioner worked 48 or more hours in October 2015 and November 2015. Accordingly, the Petitioner did not use his time limited benefits in those months and the agency incorrectly ended his benefits on December 1, 2015.

CONCLUSIONS OF LAW

The agency did not correctly end the Petitioner's FoodShare benefits, effective December 1, 2015.

THEREFORE, it is

ORDERED

That the agency reinstate the Petitioner's benefits, effective December 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 22nd day of February, 2016.

\sMayumi 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 February 22, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability