



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171144

PRELIMINARY RECITALS

Pursuant to a petition filed January 06, 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 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's FoodShare (FS) benefits because she failed to comply with work program requirements in three months.

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]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On September 4, 2015 the petitioner completed a renewal for her FS benefits. During the renewal the petitioner reported that she was an able-bodied adult without dependents (ABAWD).

3. On September 8, 2015 the agency mailed the petitioner a FoodShare Employment and Training Program (FSET) Referral letter. The letter informed the petitioner that she had been referred for enrollment in FSET, and that she must enroll and participate in FSET unless she established she was exempt; and that a FSET-referred person can only receive FS in three time limited benefit months in a 36 month period without participating in FSET. The letter described in detail how the referred person could meet the requirement (working 80 hours per month, or attending allowed work program activities total of 80 hours per month, and/or both working and attending allowed work program activities a total of 80 hours per month.)
4. The petitioner's FSET worker scheduled the first FSET orientation for September 16, 2015 at 9:00 a.m. The worker mailed the petitioner notice of this orientation. The petitioner failed to call or show for the first scheduled orientation.
5. The petitioner's FSET worker scheduled the second FSET orientation for September 28, 2015 at 9:00 a.m. The worker mailed the petitioner notice of this orientation. The petitioner failed to call or show for the second scheduled orientation.
6. The petitioner's FSET worker scheduled the third FSET orientation for October 7, 2015 at 9:00 a.m. The worker mailed the petitioner notice of this orientation. The petitioner failed to call or show for the third scheduled orientation.
7. The petitioner's FSET worker scheduled the fourth FSET orientation for October 19, 2015 at 9:00 a.m. The worker mailed the petitioner notice of this orientation. The petitioner failed to call or show for the fourth scheduled orientation.
8. The petitioner's FSET worker scheduled the fifth FSET orientation for November, 23 2015 at 9:00 a.m. The worker mailed the petitioner notice of this orientation. The petitioner failed to call or show for the fifth scheduled orientation.
9. The petitioner's FSET worker scheduled the sixth FSET orientation for December, 3 2015 at 1:00 p.m. The worker mailed the petitioner notice of this orientation. The petitioner failed to call or show for the sixth scheduled orientation.
10. The FSET program and workers called the petitioner numerous times. The petitioner's phone number was disconnected for many of the calls. There were some occasions where the FSET worker was able to leave a voicemail.
11. On December 18, 2015 the agency mailed the petitioner a notice stating that her FS benefits would terminate effective January 1, 2016 because she had failed to meet the FSET requirement and had exhausted her three months of time limited benefits.
12. The petitioner received FS benefits in September, October, November, and December 2015. September was a partial benefit month. The petitioner received her full FS allotment in October, November, and December 2015.
13. On January 4, 2016 the petitioner came to FSET ResCare office. She had already been disenrolled from the FS program, and was referred to Milwaukee Enrollment Services.
14. On January 6, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **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 the person is living with a child under 18 years of age; caring for a person who cannot care for himself or herself; caring for a child under 6 who does not live in the home; physically or mentally unable to work; pregnant; had applied for or is receiving Unemployment Compensation benefits; or is taking part in an Alcohol or Substance Abuse (AODA) program.

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 petitioner provided verification that she was attending an HSED program four days per week from 8:30 in the morning until noon. She argued that all of the appointments were made for 9 a.m. She was unable to make that time because she cannot miss her HSED classes or she will be dis-enrolled from that program. The issue that I have is that she did not make any significant effort to contact her FSET worker. Once her FS benefits were terminated she was able to come to the FSET office in person in less than four days. She had almost four months before this point, and did not come to the FSET office during those four months. She states that she did not know the name or telephone number for her FSET worker, however, this would not have prevented her from showing up in person as she did once her benefits were terminated.

The petitioner also testified that she told them she could only make afternoon appointments. I note that the petitioner did not call or show up for her last FSET appointment. Had the petitioner participated in an orientation, the petitioner's hours in her HSED program would have counted toward her FSET required hours. With those hours she would have had an additional 6 hours per week to meet the FSET required hours.

The petitioner missed six FSET orientation appointments. I do not know what else the FSET worker could have done in this case. The petitioner stated she did not know how her number could have disconnected. Perhaps, she was out of minutes at that point. Regardless, the FSET program tried to work with the petitioner, and the petitioner chose not to participate.

I conclude that the agency correctly ended FS after petitioner failed to meet the work requirement for three time-limited benefit months. As noted, petitioner can become eligible again if he meets the work requirement for a 30-day period and then reapplies.

Finally, as a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

### **3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits**

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility ([6.1.3.3](#)). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
  - Working a minimum of 80 hours in the 30-day period;
  - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
  - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

The petitioner needs to get a job, participate in *another* allowable work (NOT FSET) program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. She would be well-advised to contact a MilES income maintenance worker to discuss ways to regain eligibility or he will remain ineligible through the 36 month period.

### **CONCLUSIONS OF LAW**

The petitioner failed to meet the FS work requirement for three time-limited benefit months in a 36 month period, and thus the agency correctly discontinued FS effective January 1, 2016, under the new time limited benefit policy for able-bodied adults without dependents.

**THEREFORE, it is**

**ORDERED**

That the petition 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 24th day of February, 2016

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\sCorinne Balter  
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 24, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability