



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171165

PRELIMINARY RECITALS

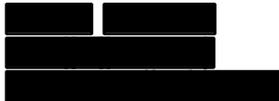
Pursuant to a petition filed January 6, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance of FoodShare benefits (FS), a hearing was held on January 27, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's FS benefits effective November 1, 2015, due to his failure to participate in FSET for three time-limited benefit 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], FSET Worker
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County. He was referred for Food Share Employment and Training (hereafter referenced as "FSET") enrollment on or about July 2, 2015.
2. On July 6, 2015, the FSET agency called the petitioner and spoke to him, informing him of an enrollment appointment set for July 14, 2015, at 9:00 A.M.

3. On July 7, 2015, the FSET agency sent the petitioner a letter again informing him of the FSET enrollment appointment on July 14, 2015, at 9:00 A.M.
4. The petitioner did not appear at the FSET agency on July 14, 2015, or call to reschedule.
5. On July 15, 2015, the FSET agency again called the petitioner and spoke to him, informing him of a second enrollment appointment set for July 23, 2015, at 9:00 A.M.
6. On July 16, 2015, the FSET agency again issued a letter to the petitioner informing him of an enrollment appointment set for July 23, 2015, at 9:00 A.M.
7. The petitioner did not appear on July 23, 2015, or call to reschedule.
8. On July 23, 2015, the FSET agency again called the petitioner and spoke to a third party who answered, leaving the message that the FSET agency had scheduled a third enrollment appointment for [REDACTED] on August 4, 2015, at 9:00 A.M.
9. On July 28, 2015, the FSET agency again issued a third letter to the petitioner informing him of an enrollment appointment set for August 4, 2015, at 9:00 A.M.
10. The petitioner did not appear on August 4, 2015, or call to reschedule.
11. On August 5, 2015, the FSET agency again called the petitioner and left a voicemail message that the FSET agency had scheduled a fourth enrollment appointment for [REDACTED] on August 13, 2015, at 1:00 P.M.
12. On August 10, 2015, the FSET agency again issued a fourth letter to the petitioner informing him of an enrollment appointment set for August 13, 2015, at 1:00 P.M.
13. The petitioner did not appear on August 13, 2015, or call to reschedule.
14. On October 12, 2015, the FSET agency again called the petitioner and spoke to him, again informing him that the FSET agency had scheduled a fifth enrollment appointment for [REDACTED] on October 19, 2015, at 9:00 A.M.
15. On October 13, 2015, the FSET agency again issued a fifth letter to the petitioner informing him of an enrollment appointment set for October 19, 2015, at 9:00 A.M.
16. The petitioner did not appear, for the fifth consecutive time, on October 19, 2015; or call to reschedule.
17. On October 19, 2015, the Department issued a Notice to the petitioner informing him that he had failed to participate in FSET in three time-limited benefit months and his FS would be discontinued effective November 1, 2015, for this reason.
18. On January 6, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of his FS on November 1, 2015; benefits were not continued pending the hearing process.
19. The petitioner admitted that he received all five enrollment appointment letters.

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 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. The petitioner was referred to FSET in August, 2015.

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 program's requirements are specified in the Department's 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. 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. Handbook, §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). Handbook, §3.17.1.11.

In this case petitioner neither met an exemption nor met the work requirement in any of the three months after the work requirement began. At the hearing, he admitted that he had not attended any of the five appointments even though he had received all five appointment letters. Rather, he asserted that he could not attend because his mother is 94 years old and sometimes needs him to assist her. He admitted that he does not live with his mother, so does not provide full-time cares; and that never asserted to the FSET agency that he was exempt, so no assessment was ever made as to any alleged or real exemption.

He mistakenly unilaterally thought that he could simply not attend FSET because he decided he did not need to go to the FSET agency or participate in any other activity because he considered himself needed elsewhere. He did not call FSET or appear at the agency to find out whether this was sufficient. He made no tangible effort to claim an exemption, or to enroll.

Based upon this record, I can only conclude that he did not meet the FSET requirements for July, August September and October, 2015 because he did not report to orient and enroll in the FSET program as required. I also must conclude that the agency correctly ended FS on November 1, 2015, after the petitioner failed to meet the work requirement for three months. FS recipients may choose not to participate in FSET. But if they so choose, do not participate for three months, and do not claim or establish an exemption, then a recipient like the petitioner will suffer the consequences of the sanction. As noted, petitioner can become eligible again if he meets the requirement for a 30-day period and then reapplies. The Legislature has established this FSET sanction process, and there is no exception under law for the circumstances asserted by the petitioner here when he never attended an appointment to claim an exemption.

CONCLUSIONS OF LAW

Petitioner failed to meet the FS work requirement for three months, and thus the agency correctly discontinued FS, effective November 1, 2015, under the time limited benefit policy for able-bodied adults without dependents.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 Madison,
Wisconsin, this 4th day of February, 2016

\sKenneth D. Duren, Assistant Administrator
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 4, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability