



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171403

PRELIMINARY RECITALS

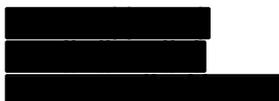
Pursuant to a petition filed January 15, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on February 23, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has met its burden to show that petitioner exhausted two Time Limited Benefit (TLB) months for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements.

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] HSPC Sr.
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 and a recipient of FS.
2. On November 20, 2015 the agency issued a letter to petitioner stating that it was referring her to the FSET program. See Exhibit 1.

3. Petitioner completed at least some of her FSET work requirements in December 2015 and January 2016.
4. At some point prior to January 15, 2016 the FSET agency advised petitioner that she had used two FS TLBs months for December 2015 and January 2016.

### 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.*

The issue in this case is whether the agency correctly determined that petitioner used 2 of those 3 TLBs. Federal FS regulations provide that, “[e]xcept as provided in §271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the [FS] Program. 7 CFR §273.15(a). Additionally, the *FSET Handbook* provides that an FSET participant has the right to file a fair hearing if he or she disagrees with an action taken by an FSET agency. *FSET Handbook*, §9.5, available online at <http://www.emhandbooks.wisconsin.gov/fset/fset.htm>. Accordingly, I find there is jurisdiction to decide this issue.

The agency's position at hearing was that petitioner did not complete her work requirements for December 2015 and January 2016. The agency's testimony was that petitioner only completed 29 hours in December and 34 hours in January. Petitioner testified that her FSET worker told her she was compliant in December given the volunteer work she was doing and that she was exempt in January, albeit mid-month. The agency was asked to show what petitioner's work requirements were and what documentation there was to show what petitioner completed. The agency agreed it would provide that documentation to this administrative law judge post-hearing, but it did not. The FSET information provided by the agency for the hearing related to another member. Further, petitioner's testimony that her volunteer work may have been counted for her FSET work requirements is bolstered by the policy that states:

For ABAWDs, working is defined as one of the following:

1. Work in exchange for money;
2. Work in exchange for goods or services (“in kind”);
3. **Unpaid work (i.e. volunteer work, community service);**
4. Self-employed at any wage; or
5. Any combination of the above.

*FS Handbook*, §3.17.1.8 (emphasis added), available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it did what it did. The agency was unable to rebut petitioner's direct testimony that she had been told she was meeting the requirement in December by her FSET worker, nor able to rebut the testimony that she was told she was exempt in January. The FSET worker in question was not made available for the hearing. There was some agency testimony that there appeared to have been some agency error in determining her January exemption without proper verification, which corroborates petitioner's version that she was told she was exempt. It was not until petitioner filed this appeal that the agency realized it had not verified her exemption, requested verification, and then exempted her for February.

I therefore find that the agency has not met its burden to show that petitioner used the 2 TLBs for December 2015 and January 2016. As such, I am remanding the matter so that the agency can remove those two months as TLBs.

### CONCLUSIONS OF LAW

The agency has not met its burden to show that petitioner exhausted two TLBs months for December 2015 and January 2016.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the FSET agency with instructions to take the administrative steps necessary to reverse the determination that petitioner exhausted a TLB in December 2015 and January 2016. This shall be done within ten (10) days of the date 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**

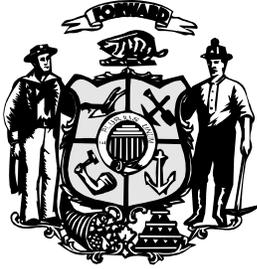
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 10th day of March, 2016

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\sKelly Cochrane  
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 March 10, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability