



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171677

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2016, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Kenosha County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 10, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner’s FoodShare 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:

Kenosha County Department of Human Services

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Kenosha County.
2. Petitioner applied for FoodShare on or about October 9, 2015. He was determined to be an Able Bodied Adult Without Dependents and subject to work requirements. He did not meet any of the exemptions. He was assigned to the FoodShare Employment and Training Program (FSET).
3. He was sent 3 notices for FSET orientation in October 2015 and 2 in November 2015. He did not appear for any of the orientation sessions. He was sent a final notice in January 2016 that informed him that he should contact the agency. He did not do so.

4. Petitioner's time limited benefits were the months of November and December 2015 and January 2016.
5. Petitioner was notified that his FoodShare were to be discontinued effective February 1, 2016. He then filed this appeal.
6. All notices involved here were sent to Petitioner at the above address. This is his sister's address and was provided to the agency by Petitioner on his FoodShare application. It is also the address provided for this appeal.

DISCUSSION

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2*. This was implemented statewide as of 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 an ABAWD, if that person is:

- ...
- 18 to 49 years in age*;
 - Able to work;
 - Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
 - Not pregnant.

...
FSH §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.

FSH §3.17.1.5.

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FSH, §3.16.1.4.* A person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FSH, §3.17.1.17.*

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, §3.17.1.7 (asterisk comment omitted).

Petitioner testified that his sister did not provide him with any of the notices for the FSET program, just the notice of discontinuance and, apparently, the hearing notice as he managed to file an appeal before the case closure took effect. I am not reversing the discontinuance of FoodShare for failing to meet ABAWD requirements. All notices were sent to the address provided by Petitioner. He does not meet the exemption requirements. He missed numerous appointments. It was his responsibility to provide an address and phone number at which he could be reached. Further, that he did not get any of the 6 FSET notices but got the case closure and hearing notice stretches credulity. Petitioner has not met ABAWD requirements and has used his 3 months of time limited benefits. There is no basis for reversing the agency action or adjusting the time limited benefit clock.

CONCLUSIONS OF LAW

1. That the documentation is not sufficient to demonstrate that Petitioner is exempt from ABAWD FoodShare work requirements.
2. That the agency correctly discontinued Petitioner's FoodShare benefits for failing to meet ABAWD requirements.

NOW, THEREFORE, it is **ORDERED**

That this appeal 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 23rd day of March, 2016

\sDavid D. Fleming
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 23, 2016.

Kenosha County Human Service Department
Division of Health Care Access and Accountability