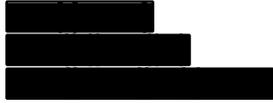




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



FWP/171820

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 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 March 01, 2016, at Milwaukee, Wisconsin. Petitioner was told he could submit information through the end of March 2016 from his employer as to his private employment. He did not do so.

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner's FoodShare case was reviewed in August 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. Petitioner did enroll in the FSET program on or about September 3, 2015. He was assigned to job search and other activities that were to total 20 hours per week. He only sporadically attended appointments and did not meet the 20 hour per week requirement.
4. Petitioner did self-report part time employment on October 15, 2015. That employment ended and Petitioner reported that in early December 2015. Petitioner did not submit paystubs or other evidence of employment details.
5. Petitioner did reload his FSET program supplied bus pass weekly for weeks 36-51 of the year 2015.
6. Petitioner's time limited benefits were the months of October, November and December 2015.
7. Petitioner was notified that his FoodShare were to be discontinued effective January 1, 2016.

### 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).*

Also relevant here is the following:

*3.17.1.14 Adjusting or Deleting the FS Clock Page (36-Month Period)*

Deleting or adjusting the FoodShare Clock page may be required to accurately reflect ABAWD status and FS eligibility. The timing of the receipt and processing of verification may result in the 36-month clock beginning incorrectly or a month being counted as a *TLB*, even though the *ABAWD* is later determined to be a Non-ABAWD or exempt. The 36-month clock starts when an ABAWD is determined to be subject to time-limited benefits for the first time and the first TLB is issued. The 36-month clock should not be deleted unless proof of the exemption is submitted timely and no other TLBs should have been applied. Workers can only delete the clock if three or fewer months have passed on the clock. If more than 3 months have passed and the clock needs to be deleted, workers should contact the CARES Call Center.

...  
*FSH, §3.17.1.14.*

Petitioner testified that since he was working part time he was completing requirements. The problem with that is that he was not providing, and has not provided, any documentation to know that he was working beyond the October 2015 self-report. Though he was not documenting participation he did not seem to have a problem picking up bus pass benefits for weeks at a time.

I am declining to reverse this discontinuance of Petitioner's FoodShare. Simply the FSET requirement is twofold – participation and timely documentation of that participation. Quite frankly, it does not seem that Petitioner was recognizing the urgency of these requirements and taking them seriously. He did not make most of the appointments or activities set for him. He did not document his private sector work. 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 31st day of March, 2016

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\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 31, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability