



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/171850

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 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 hearing was held on February 25, 2016, at Milwaukee, Wisconsin.

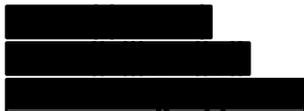
The issue for determination is whether Milwaukee Enrollment Services correctly ended the Petitioner’s FoodShare benefits, effective February 1, 2016.

NOTE: The record was held open until March 3, 2016, to give the FSET Office an opportunity to submit the attendance records for Petitioner’s volunteer work site. The attendance records were timely received. They have been marked as Exhibit 4 and entered into the record.

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: , HSPC, Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 8, 2015, the agency sent the Petitioner an informational mailing to educate the Petitioner about the new work requirement for Able Bodied Adults Without Dependents (ABAWD). (Exhibit 2, pgs. 6-8)
3. On September 18, 2015, the Petitioner completed a renewal, reporting a household of one person and income from Veterans' benefits and odd jobs. (Exhibit 2, pgs. 6 and 24)
4. On September 21, 2015, the agency sent the Petitioner a notice referring him to the FSET program and advising him that his time limited benefits would begin in October 2015. (Exhibit 2, pgs. 14-17)
5. On September 22, 2015, the FSET Office sent the Petitioner a notice, advising the Petitioner that he had an appointment scheduled for October 1, 2015. (Exhibit 3, pgs. 37-38)
6. The FSET Office wasn't sure if the Petitioner attended orientation, so it scheduled another appointment for October 13, 2015. (Exhibit 3, pg. 15)
7. The record contains no documentation of a notice being sent to the Petitioner regarding this appointment. (Exhibit 3)
8. On October 22, 2015, the Petitioner signed an Employment Plan that required him to participate in the MET program for six hours per week. He had no other requirements. (Exhibit 3, pgs. 21 and 22)
9. On November 4, 2015, the Petitioner signed another copy of the October 22, 2015 employment plan. (Exhibit 3, pgs. 23-24)
10. On December 14, 2015, the Petitioner signed another Employment Plan that required him to participate in the MET program for 6 hours per week. (Exhibit 3, pgs. 25-26)
11. On January 19, 2016, the agency sent the Petitioner a notice, indicating that his FoodShare benefits would be ending, effective February 1, 2016, because he used up his time limited benefits. (Exhibit 2, pgs. 18-21)
12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 4, 2015. (Exhibit 1)

DISCUSSION

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective 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 a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

FSH §3.17.1.4

An ABAWD may be exempt from work requirements if the person is:

1. Determined unfit for employment which includes:
 - a. **Receiving temporary or permanent disability benefits**
 - 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 a social worker.
2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
5. A high school student 18 years of age or older, attending high school at least half time;
6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Receiving Transitional FS benefits; or
8. Meeting the ABAWD work requirement.

Emphasis added; FSH §3.17.1.4

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, §13.17.1.7.

It is a well-established principle that a moving party, meaning the party that wants to change the status quo, 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). Here, the moving party is the county

agency, because it wants to end the Petitioner's FoodShare benefits. Thus, the agency bears the burden to prove it correctly ended the Petitioner's benefits.

The Petitioner contends that he is unable to meet the FSET requirements because of chronic back pain that is neurological in nature and radiates to other parts of his body. According to the PIN Comment dated October 22, 2015, "Participant turned in a medical document stating his disability status. IM has a copy of the document, but has not yet changed job seeker status." It is unclear from the record, what happened with the medical documentation, because there is nothing in the case comments discussing Petitioner's medical condition / medical documentation, other than Petitioner reporting and verifying the receipt of Veterans' benefits. (See Exhibit 2, pg. 6)

Generally speaking, veterans' benefits are only paid to individuals who have been determined, by the Veteran's Administration, to have a service-related disability. See:

<https://www.vets101.org/nav/programs/cash/>

and

<http://www.military.com/benefits/veteran-benefits/veterans-benefits-faqs.html>

There is nothing in the record to suggest the Petitioner is receiving benefits for anything other than a service-related disability. Consequently, under *FSH §3.17.1.4*, he should have been considered exempt / or a non-ABAWD.

Accordingly, it is found that the agency did not correctly end the Petitioner's FoodShare benefits effective February 1, 2016.

The agency might wish to issue a notice of proof needed to verify the type of VA benefit the Petitioner is receiving, but I leave that to the discretion of the agency. I note that the case comment for September 18, 2015, indicates that the Petitioner already provided verification of his VA benefits. (See Exhibit 2, pg. 6)

CONCLUSIONS OF LAW

- 1) The Petitioner is exempt under *FSH §3.17.1.4*, because he receives veterans' benefits.
- 2) The agency did not correctly end the Petitioner's FoodShare benefits effective February 1, 2016.

THEREFORE, it is

ORDERED

That the agency reinstate the Petitioner's FoodShare benefits, effective February 1, 2016. The agency shall take all administrative steps necessary to complete this task within ten days 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 29th day of
March, 2016.

\sMayumi M. Ishii
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 29, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability