



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/172184

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2016, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on March 15, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner’s FoodShare (FS) benefits because he failed to comply with work program requirements in three 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:

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Racine County.
2. The petitioner applied for FoodShare (FS) benefits. He is an able-bodied adult without dependents.

3. On January 21, 2016 the agency sent the petitioner a FoodShare Employment and Training (FSET) referral notice. The notice stated that he had been referred for enrollment in FSET, and that beginning January 2016, he must enroll and participate in FSET unless he established he was exempt; and that a FSET-referred person can only receive FS in three time limited benefit months in a 36 month period without participating in FSET. The letter described in detail how the referred person could meet the requirement (working 80 hours per month, or attending allowed work program activities total of 80 hours per month, and/or both working and attending allowed work program activities a total of 80 hours per month.)
4. The FSET program set up FSET orientations for February 1, 2016 and February 10, 2016. The petitioner did not attend either of those orientations.
5. On February 17, 2016 the agency sent the petitioner a notice stating that his FS benefits would end effective March 1, 2016 because he had used up his three months of Time Limited Benefits.
6. On February 22, 2016 the petitioner attempted to attend an FSET orientation. He was unable to attend because the agency had already sent him a notice stating that his FS benefits were terminating effective March 1, 2016.
7. On February 22, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

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.

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 requirements are stated in the *FSET Handbook*, as follows:

6.3.2.1 Definition of Working for ABAWDs

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

- Work in exchange for money;

- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see *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. *FoodShare Wisconsin 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. *Ibid.*, §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). *Ibid.*, §3.17.1.11. A person is exempt if the person is approved by the agency as meeting one of the following seven exemptions: living with a child under 18 years of age; caring for a person who cannot care for himself or herself; caring for a child under 6 who does not live in the home; physically or mentally unable to work; pregnant; had applied for or is receiving Unemployment Compensation benefits; or is taking part in an Alcohol or Substance Abuse (AODA) program.

In this case the agency admits that the petitioner has not exhausted his three months of time limited FS benefits. The agency first mailed the petitioner the FSET referral on January 19, 2016. The petitioner's FSET clock would have started in February 2016. The petitioner did not meet the FSET requirements for February, and used up one month of time limited benefits. This leaves two time limited benefit months remaining.

I note that the petitioner attempted to attend one FSET orientation on February 22, 2016. He was not allowed to attend that orientation because he had already been sent notice that his FS benefits were ending for failing to participate in the FSET program. This was an error on the agency's part. However, even if the petitioner were allowed to attend that orientation, it would have been impossible for him to meet his 80 hour requirement for February. Thus, the agency correctly counted February as a time limited benefit.

As a point of information to the petitioner, if he fails to meet his 80 FSET hours in a month, that month is counted as a time limited benefit month. He may only have three months of time limited benefits in a 36 month period. After he exhausts those three months of time limited benefits he cannot receive FS benefits until the 36 month period ends, he can show that he has participated in work or a training program (not FSET) for 30 days, or he meets an FSET exemption.

CONCLUSIONS OF LAW

The agency incorrectly discontinued the petitioner's FoodShare (FS) benefits because he had only failed to comply with the work requirement for one month.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with instruction to reset the petitioner's FSET clock to reflect that he has two months of time limited FS benefits remaining. The only time limited benefit month that he has used is February 2016. If the agency has not already done this, the agency shall comply with this order 10 days from the date of decision. This appeal is dismissed in all other respects.

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 4th day of April, 2016

\sCorinne Balter
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 April 4, 2016.

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