



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/172238

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 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 March 24, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's FS 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: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Milwaukee County. He is the only person in his FoodShare (FS) household. He is an able-bodied adult without dependents.
2. The petitioner completed a renewal of for his FS benefits on November 3, 2015.

3. On October 26, 2015 the agency mailed the petitioner a Foodshare Employment and Training Program (FSET) Referral letter informing him, among other things, that he had been referred for enrollment in FSET, and that he must enroll and participate in FSET unless he established he was exempt. The notice went on to state 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 agency set up orientations for the petitioner on November 4, 2015, November 16, 2015, November 25, 2015, and December 7, 2015. The petitioner was mailed notice of all scheduled orientations. He did not attend any of these scheduled orientations.
5. The FSET agency called the petitioner on several occasions. At one point the petitioner said that he had been unable to attend one of the scheduled orientations. The FSET agency told the petitioner that he could simply walk-in. The petitioner still never completed an FSET orientation.
6. The petitioner received full monthly FS benefits in December 2015, January 2016, and February 2016.
7. On February 17, 2016 the agency mailed the petitioner a notice stating that his FS benefits would terminate effective March 1, 2016 because he had exhausted his three months of time limited FS benefits.
8. On February 24, 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 can be exempt from the program if he is 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. *FoodShare Wisconsin Handbook*, §3.17.1.5. In this case the petitioner never provided the agency with verification that he met one of the seven exemptions. Rather, he indicated that he was an able-bodied adult without dependents. As such, he was required to enroll in the FSET program.

The *FSET Handbook*, at section 3.5.2, specifically states in this failure to enroll situation, as follows:

In order for a non-exempt ABAWD to meet the work requirement through FSET participation and maintain ongoing FS benefits after the TLB month, s/he must be enrolled and fully participating in FSET by the 10th day of the third TLB month. The FSET worker should document in PIN comments information relating to each contact that is attempted.

In this case, the petitioner never enrolled in the FSET program. At the hearing the petitioner testified that he went back and forth from Milwaukee, and that he did not get all the notices. The petitioner nonetheless confirmed the address where these notices were sent as his actual address. A person does not get to provide an address, and then state that he did not receive the items sent to the provided address. He is responsible to get his mail there. This address continues to be his address. The FSET program also

spoke to him, and told him to walk-in. He was still unable to complete a one hour orientation in a three month period. This is not in compliance with the FSET program.

The petitioner next argued that he was not in a stable place, and was not able to participate in the FSET program. He does not get to pick what he can and cannot do. The petitioner admits that he did not enroll in the program. Under the FSET rules there is no good cause exception for an abled bodied adult who fails to enroll in the program. He has used up his three months of time limited benefits, and thus the agency properly seeks to terminate the petitioner's FS benefits effective March 1, 2016.

Finally, as a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility ([6.1.3.3](#)). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;
 - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

The petitioner needs to get a job, participate in *another* allowable work (NOT FSET) program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. He would be well-advised to contact a MILES income maintenance worker to discuss ways to regain eligibility or he will remain ineligible through the 36 month period.

CONCLUSIONS OF LAW

The agency correctly discontinued the petitioner's FS because he failed to comply with work program requirements in three months.

THEREFORE, it is

ORDERED

That the petition 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 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.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability