



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/172441

PRELIMINARY RECITALS

Pursuant to a petition filed March 01, 2016, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on May 03, 2016, at Racine, 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: [Redacted]

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Racine County.
2. Petitioner applied for FoodShare on September 28, 2015. That FoodShare request was approved.
3. Petitioner was exempt from Able Bodied Adult Without Dependents and was not subject to work requirements through October 26, 2105 because he had knee surgery.

4. Petitioner was assigned to the FoodShare Employment and Training Program (FSET).
5. Petitioner was assigned to FSET orientation on October 19, October 28, November 18 and November 30, 2015. He did not appear for any of these nor did he call to ask that they be rescheduled. He never enrolled in the FSET program.
6. Petitioner's time limited benefits were the months of November and December 2015 and January 2016.
7. Petitioner was notified that his FoodShare were to be discontinued effective February 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).

Petitioner made three arguments. First, he contends that he had a medical exemption. That was, however, only effective through October 26, 2015. He was released for light duty effective October 26 and that would not prevent attending an FSET orientation. (I do note that the agency incorrectly argues that Petitioner's medical documents were not signed by a physician - one was and, further, the requirement is signature by a physician or medical professional. See *FSH §3.17.1.5, 1c.*) The agency is required to schedule at least 2 FSET appointments and it did so here in November 2015. See *FSET Handbook, §3.5.2.*

Second, Petitioner believes he should be exempt as he cares for his 17 month old child. He has not, however, provided documentation of this which would minimally include proof of paternity and evidence of the mother's work schedule.

Third, Petitioner stated that he did not get the last 2 notices, only the first 2. He stated that he lives in a 40 unit apartment complex and there is someone else there with his last name. I am rejecting that argument. There is no proof of that and it is not believable that he got notices when he was still exempt but not when his exemption was over.

I am declining to reverse this discontinuance of Petitioner's FoodShare. 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 for the time limited benefit months of November and December 2015 and January 2016.
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.

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 May, 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 May 31, 2016.

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