



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/172488

PRELIMINARY RECITALS

Pursuant to a petition filed March 07, 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 April 07, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner's FoodShare benefits, effective March 1, 2016, because he used up his time limited benefits.

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], 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. In Mid-November, the Petitioner became homeless. He was asked to leave his residence on [Redacted] because he could not pay the rent. (Testimony of the Petitioner)

3. On November 25, 2015, the Petitioner called the agency to complete a renewal. At that time, the Petitioner reported that he was homeless, but still provided an address on [REDACTED] even though it was no longer valid, because he did not know where he was going to end up and was moving from place to place. In addition, the Petitioner thought, incorrectly, that his time limited benefits would extend to June or July. (Exhibit 2, pg. 2; Testimony of Petitioner)
4. On November 27, 2015, the agency sent the Petitioner a letter referring him to the FoodShare Employment and Training (FSET) program and advising him that his time limited benefits were beginning in December 2015. The notice was sent to the [REDACTED] address. (Exhibit 2, pg. 8-11)
5. The FSET office sent the Petitioner appointment notices on December 11, 2015, December 23, 2015 and January 4, 2016. The notices were sent to the [REDACTED] address. (Exhibit 3, pgs. 14-19)
6. On January 11, 2016, the FSET office sent the Petitioner a letter advising him that he needed to meet a work requirement and that he could do so by enrolling in the FSET program. The letter also told the Petitioner that he needed to, “enroll and take part in activities by the start of your third time-limited FoodShare benefit month. Otherwise, you will use up your three time-limited benefits months, and your FoodShare benefits will end.” (Exhibit 3, pgs. 20-21)
7. On February 17, 2016, the agency sent the Petitioner a notice, advising him that his FoodShare benefits would be ending effective March 1, 2016, because he used up his three months of time-limited benefits. (Exhibit 2, pg. 12)
8. The Petitioner did not get any of the notices, because he was asked to leave the [REDACTED] address due to his inability to pay rent. Consequently, the Petitioner did not keep any of the appointments. (Testimony of Petitioner)
9. The Petitioner realized that his benefits ended when he went to use his EBT card, and had no money on it. (Testimony of Petitioner)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 7, 2016. (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.

FSH §3.17.1.4

DHCAA Operations Memo 16-06, effective April 11, 2016, indicated that, “a Foodshare member may now be determined to be an exempt ABAWD due to being unfit for employment if he or she is an ABAWD who...is experiencing chronic homelessness.”

The Operations Memo provided the following examples:

Example 1: An IM worker conducts a FoodShare renewal interview over the telephone with Jolene. Jolene explains that she is homeless and currently sleeping at a temporary shelter at night and does not know when she will find permanent housing. The worker determines Jolene is chronically homeless and an exempt ABAWD.

Example 2: An IM worker conducts a FoodShare application interview over the telephone with Andrea. Andrea explains that she is homeless and currently sleeping on the couches of three different friends and does not know when she will find permanent housing. The worker determines Andrea is chronically homeless and an exempt ABAWD.

Example 3: An IM worker conducts a renewal FoodShare interview over the telephone with Ronald. Ronald explains that he is living at his friend’s house, but he is not on the lease and cannot use it as a mailing address. Ronald plans to continue living with his friend. The worker determines that Ronald is not chronically homeless.

Good Cause Exemption

Under section 6.6.1 of the *FoodShare Employment and Training Handbook (Release 15-01)*, it states, “Good cause may be granted for temporary circumstances beyond the ABAWD’s control.” That section lists some examples of good cause reasons for non-participation, including when, “an individual is referred to FSET and there is an agency delay in enrollment.” Section 6.6.1 also states that the list is not exhaustive. *See also Ops Memo 14-27 – Amended 5/18/15.*

It is undisputed that the Petitioner is otherwise an able-bodied adult without dependent children.

It is undisputed that the Petitioner did not keep any appointments with the FSET office in December 2015 and January 2016. It is also undisputed that the Petitioner did not contact the FSET office after the January 11, 2016 warning letter was sent to him, to enroll in the program.

Although, the Petitioner did not get any of the notices that the FSET office sent him, that was because the Petitioner intentionally provided the agency with an invalid mailing address. As such, it cannot be said that his failure to keep his appointments was due to circumstances beyond his control. Indeed, the Petitioner could have and should have made arrangements to use the Coggs Building as his mailing address, if he did not have any other mailing address. Had he done so, he could have timely received the notices and taken action to avoid using his time-limited benefits.

Accordingly, it is found that the Petitioner used up his time limited benefits in December 2015, January 2016 and February 2016. The agency correctly ended the Petitioner's FoodShare benefits, effective March 1, 2016.

Chronic Homelessness Exemption

In this case, the Petitioner reported being homeless when he renewed his benefits in November 2015, but the exemption for chronic homelessness did not exist at that time. As discussed above, that exemption became effective on April 11, 2016.

At the hearing on April 7, 2016, the Petitioner reported that he is still homeless, but staying at a homeless shelter or at minimum using the shelter as a mailing address. Accordingly, I am remanding this case to the agency to determine whether the Petitioner is chronically homeless and therefore, exempt from ABAWD requirements for April 11, 2016, going forward.

If the Petitioner disagrees with this new determination, he will have to file a NEW appeal.

CONCLUSIONS OF LAW

- 1) The agency correctly ended Petitioner's benefits effective March 1, 2016, because the Petitioner used up his time limited benefits.
- 2) The Petitioner's case needs to be reviewed to determine whether he is chronically homeless person from April 11, 2016, going forward.

THEREFORE, it is

ORDERED

That the agency review the Petitioner's case to determine whether he meets an exemption to ABAWD requirements, as a chronically homeless person from April 11, 2016 going forward. The agency shall issue a notice to Petitioner advising him of their determination. The agency shall take all administrative steps to complete this task within 10 days of this decision.

In all other respects, 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 25th day of April, 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 April 25, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability