



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/172726

PRELIMINARY RECITALS

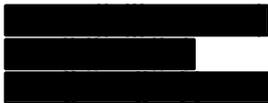
Pursuant to a petition filed March 09, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 17, 2016, at Milwaukee, Wisconsin. A hearing was previously scheduled and held on April 20, 2016. Petitioner's original appeal was with regard to his FS discontinuance due to lack of employment verifications. At the hearing, the Petitioner stated that he is appealing the discontinuance of FS benefits due to using 3 time-limited benefit months. Specifically, he disputes that April, 2016 is his 3rd time-limited benefit month. The hearing was adjourned and rescheduled to allow the case to be re-coded to a FSET appeal and allow the agency to prepare for the issue of Petitioner's usage of time-limited benefit months. Post hearing on May 17, 2016, the record was held open for the agency to submit the Petitioner's most recent job logs and pay statements. The agency submitted those documents on May 17, 2016 and the record was closed.

The issue for determination is whether the agency properly discontinued Petitioner's FS benefits effective May 1, 2016 due to the Petitioner using 3 time-limited benefit months in June and July, 2015 and April, 2016.

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:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 24, 2015, the Petitioner completed a FS renewal. He reported that he was not employed. On April 27, 2015, a FSET referral notice was issued to the Petitioner.
3. On May 6, 2015, the Petitioner was enrolled in the FSET program.
4. Petitioner used two months of time-limited FS benefits in June and July, 2015. Petitioner met FSET work requirements for August, 2015 – February, 2016.
5. On February 12, 2016, the agency received an employer verification of earnings from [REDACTED]. It reported that the Petitioner was employed with a start date of December 17, 2015. It reported he worked 16 hours/week at \$9/hour.
6. On February 17, 2016, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of his employment at [REDACTED]. The due date for the information was February 26, 2016.
7. On February 24, 2016, Petitioner was hired at [REDACTED]. He reported he would work 80 hours/pay period at \$10/hour.
8. On February 25, 2016, Petitioner and a supervisor from [REDACTED] signed a Participant Timesheet showing Petitioner completed 24 hours of job search activities for the week. This was submitted to the agency on February 26, 2016.
9. On February 29, 2016, the agency issued a Notice of Decision to the Petitioner informing hi that his FS benefits would end on April 1, 2016 due to failure to provide requested verifications.
10. On February 29, 2016, Petitioner submitted independent job search logs reporting 4 hours of job search activities on February 22, 2016, 3 hours on February 23, 2016 and 4 hours on February 24, 2016. These were the last job search logs submitted by the Petitioner.
11. On March 1, 2016, the agency issued a Notice of Decision to the Petitioner informing him that he would receive FS benefits of \$92/month effective April 1, 2016.
12. On March 16, 2016, the agency issued a Notice of Proof Needed to the Petitioner requesting employment verification from [REDACTED] and [REDACTED]. The due date for the information was March 25, 2016.
13. On March 24, 2016, the agency extended the due date for the verifications to April 15, 2016.
14. The agency asserts that the Petitioner did not meet work requirements for March, 2016. However, the agency erred in not counting this as a time-limited benefit month and therefore concedes it should not be counted as a time-limited benefit month.
15. On or about April 1, 2016, the agency received verification that Petitioner's employment with [REDACTED] ended on December 26, 2015.
16. On April 1, 2016, the agency received Petitioner's pay statements from [REDACTED] for the pay periods of February 29, 2016 – March 4, 2016 and March 7, 2016 – March 11, 2016 showing the Petitioner worked a total of 64 hours during those periods. These were the last pay statements submitted to the agency.

17. On April 18, 2016 and April 20, 2016, the agency issued Notices of Decision to the Petitioner informing him that his FS benefits would end on May 1, 2016 due to him using 3 months of time-limited benefits without meeting work requirements.
18. On April 19, 2016, Petitioner reported he is no longer employed and has no income.

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.

In this case, the Petitioner does not dispute that he did not meet FSET work requirements for June and July, 2015. His dispute was with regard to meeting requirements for the 3rd TLB month, April, 2016.

At the hearing, the agency presented evidence that the most recent job search logs submitted by the Petitioner were at the end of February, 2016. The most recent pay statements submitted by the Petitioner were submitted at the beginning of April showing hours worked for March, 2016.

The agency asserts that March, 2016 was actually Petitioner's 3rd TLB; however, due to a system error, it was not counted as a TLB month and the agency testified that it is not counting March, 2016 as the Petitioner's 3rd TLB month.

The agency asserts that the Petitioner submitted no job search logs or other evidence of meeting work requirements for April, 2016 and therefore counts April, 2016 as the Petitioner's 3rd TLB month.

The Petitioner testified that he worked for [REDACTED] 30 – 40 hours in April, 2016 and submitted the pay statements as well as job search logs for April, 2016. He testified that he did not turn the information in on a Friday but instead submitted them on a Monday and was told that it was too late. The agency agreed to submit the most recent job search logs and pay statements submitted by the Petitioner post-hearing. I received from the agency job search logs for February, 2016 and pay statements submitted for February, 2016. The agency asserts that these were the last job logs and pay statements submitted by the Petitioner.

Without any evidence to demonstrate that the Petitioner engaged in required work activities during the month of April, 2016 and based on the agency's assertions that the last submission of job logs or work hours by the Petitioner was in February, 2016, I must uphold the agency's determination that April, 2016 was the Petitioner's 3rd time-limited benefit month. If the Petitioner has evidence that he met the work requirements for April, 2016, he can submit that information along with a request for re-hearing pursuant to the instructions below.

CONCLUSIONS OF LAW

The agency properly determined that April, 2016 was the Petitioner's 3rd time-limited benefit month and therefore, properly ended his FS benefits effective May 1, 2016.

THEREFORE, it is

ORDERED

That the Petitioner's 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.

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 13th day of June, 2016

\sDebra Bursinger
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 June 13, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability