



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/172777

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 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 19, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Service correctly ended the Petitioner's FoodShare benefits effective February 1, 2016.

Note: The record was held open for one day to give the FSET office an opportunity to submit copies of the paystubs it received from the Petitioner. The packet of paystubs has been marked as Exhibit 6 and entered into the record.

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], Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
[Redacted], 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. On September 9, 2015, the Petitioner filed an application for Foodshare benefits. The Petitioner reported being a homeless adult with no disability and no dependents. (Exhibit 2, pgs. 11-15)
3. On September 10, 2015, the agency referred the Petitioner to the FSET program and incorrectly advised the Petitioner that his time limited benefits began in September 2015. (Exhibit 2, pgs. 16-19)
4. Petitioner's time limited benefits began in October 2015. (Exhibit 3, pg. 8)
5. On September 21, 2015, the Petitioner signed an employment plan that required him to engage in an employment search 20 hours per week and to participate in "workfare" 6 hours per week. (Exhibit 3, pgs. 30-32)
6. In October 2015, the Petitioner worked 95.56 hours. (Exhibits 4 and 6)
7. On November 25, 2015, the Petitioner signed an employment plan that required him to conduct a job search 20 hours per week, complete Road Map to Success between December 7, 2015 and December 10, 2015, for a total of 16 hours and "work fare" for six hours per week. (Exhibit 3, pgs. 33-35)
8. In November 2015, the Petitioner worked 24 hours. (Exhibits 4 and 6)
9. In December 2016, the Petitioner worked 73.25 hours and completed the Road Maps to Success Program, which the FSET office estimated to be 16 hours, for a total of 89.25 hours. (Exhibit 3, pg. 34; Exhibits 4-6)
10. On January 19, 2016, the agency sent the Petitioner a notice, indicating that his FoodShare benefits would be ending, effective February 1, 2016, because he used up his time limited benefits. (Exhibit 2, pgs. 20-23)
11. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 15, 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

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, §13.17.1.7

It is undisputed that the Petitioner is an Able-Bodied Adult without Dependents (ABAWD). The agency contends that the Petitioner did not comply with ABAWD requirements in October, November and December 2015 and therefore, exhausted his three months of time limited benefits.

The Petitioner's paystubs indicate that he worked a total of 95.56 hours in October 2015. As such, he met the work requirement described in *FSH, §13.17.1.7* for the month of October.

In November, it is undisputed that the Petitioner worked a total of 24 hours. The Petitioner asserts that he conducted the required job search in October 2015. However, there is no documentation to corroborate his assertion. As such, it is found that the Petitioner used one time limited benefit month in November 2015.

The Petitioner's paystubs indicate that he worked a total of 73.25 hours in December 2015. The Petitioner also produced a certificate of completion for the Road Maps to Success course that the FSET office asked him to complete. According to Petitioner's employment plan, that program is 16 hours long. As such, the Petitioner put in 89.25 hours in December 2015, exceeding the work requirement described in *FSH, §13.17.1.17*.

Because the Petitioner only used one time limited benefit month in November 2015, the agency incorrectly ended his benefits effective February 1, 2016.

I note that 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.

The Petitioner testified that since his release from prison in September 2015 he has been homeless and moving from home to home. The agency should review the Petitioner's case to determine whether the Petitioner is exempt from ABAWD requirements due to chronic homelessness. If the Petitioner disagrees with the agency's determination, he will have to file a NEW request for fair hearing.

CONCLUSIONS OF LAW

Because the Petitioner used only one time limited benefit month in November 2015, the agency incorrectly ended the Petitioner's FoodShare benefits effective February 1, 2016.

THEREFORE, it is

ORDERED

That the agency reinstate the Petitioner's FoodShare benefits effective February 1, 2016 and that the agency re-evaluate the Petitioner's case to determine whether he is exempt from ABAWD requirements as a chronically homeless individual. The agency shall issue a notice to the Petitioner, advising him of their determination. The agency shall take all administrative steps to complete these tasks within ten days of this decision.

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 5th day of May, 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 May 5, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability