



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/173468

PRELIMINARY RECITALS

Pursuant to a petition filed April 05, 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 03, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner's Foodshare benefits, effective April 1, 2016.

NOTE: The record was held open until May 4, 2016, to give the Petitioner an opportunity to submit verification of his employment. The Petitioner submitted a letter from his employer. It 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], 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. On December 7, 2015, the Petitioner completed an ACCESS application indicating that he was an adult with no dependents in the home and not receiving any disability income. (Exhibits 2, pgs. 13-21)
3. On December 8, 2015, the agency sent the Petitioner a referral to the FSET program indicating that his time limited benefits began December 2015. (Exhibit 2, pgs. 28-29)
4. On December 10, 2015, the agency pended the Petitioner's case for verification of residency, because it received a prisoner discrepancy report. (Exhibit 2, pg. 12)
5. After determining that the Petitioner had been released from jail in November 2015, the agency continued the Petitioner's case and on January 7, 2016, the agency sent the Petitioner a referral to the FSET program indicating that his time limited benefits began January 2016. (Exhibit 2, pgs. 30-31)
6. Also on January 7, 2016, the FSET office sent the petitioner an appointment letter, indicating that it made an appointment for him on January 14, 2016. (Exhibit 3, pgs. 30-31)
7. On January 14, 2016, the Petitioner reported to the FSET office and signed an employment plan that required him to engage in a job search 5 hours per week, work at a barber shop 15 hours per week and complete a 16 hour program at Road Maps to Success in February 2016. (Exhibit 3, pgs. 17-19)
8. On January 28, 2016, the agency sent the Petitioner a third referral to the FSET program, indicating that his time limited benefits began January 2016. (Exhibit 2, pgs. 32-33)
9. The Petitioner completed the Road Maps to Success program on February 4, 2016. (Exhibit 5)
10. On March 8, 2016, the agency sent the Petitioner a fourth referral to the FSET program, indicating that his time limited benefits began January 2016. (Exhibits 2, pgs. 34-35)
11. On March 18, 2016, the agency sent the Petitioner a notice indicating that his FoodShare benefits would be ending effective April 1, 2016, because he used up his time limited benefits. (Exhibits 2, pgs. 36-37)

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 a well-established principle that a moving party, meaning the party that wants to change the status quo, generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). Here, the moving party is the county agency, because it wants to end the Petitioner's FoodShare benefits. Thus, the agency bears the burden to prove it correctly ended the Petitioner's benefits.

It is undisputed that the Petitioner is an able-bodied adult without dependents. It is also undisputed that Petitioner attended the very first appointment the FSET office set up for him on January 14, 2016 and he enrolled in the FSET program on that same day.

Even though the Petitioner completed his application on December 7, 2016 and received his referral letter on December 8, 2016, the agency didn't send the Petitioner an appointment letter until January 7, 2016, for an appointment already halfway through the month. It appears the agency delayed contacting and enrolling the Petitioner due to a prisoner discrepancy report that it received. This is something over which the Petitioner had no control.

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*. Accordingly, I am finding good cause for Petitioner's inability to meet ABAWD work requirements in January 2016, since there was a delay in his enrollment caused by circumstances outside of his control.

With regard to February and March 2016, the Petitioner was required to perform 5 hours per week of job search, a 16 hour Road Maps to Success program, and he was to work at a barber shop 15 hours per week.

Petitioner did not provide any documentation of his job searches. However, Exhibit 5 clearly shows that the Petitioner completed 16 hours of programming at Road Maps to Success in February 2016. Petitioner also provided a letter from a [REDACTED] [REDACTED] [REDACTED] as verification that Petitioner was working 25-35 hours per week at a barber shop. Unfortunately, the letter does not state when the Petitioner began working those hours at the barber shop.

This matter will have to be remanded to the agency to verify the number of hours the Petitioner worked at [REDACTED], [REDACTED] Street in order to determine whether the Petitioner had been meeting the 80 hour per month work requirement. The agency will then need to issue a new notice to the Petitioner. If the Petitioner disagrees with the agency's new determination he will have to file a NEW appeal.

CONCLUSIONS OF LAW

1. Petitioner had good cause for his non-compliance with the ABAWD work requirement in January 2016 and therefore, did not use up his time limited benefits in that month.
2. The agency did not correctly end the Petitioner's FoodShare benefits effective April 1, 2016.

THEREFORE, it is

ORDERED

That the agency reinstate Petitioner's FoodShare benefits effective April 2016. The agency shall also verify the number of hours the Petitioner worked at Sid's Shear Magic and determine whether he met the work requirement for February 2016 going forward. The agency shall issue a new notice to the Petitioner regarding its determination. The agency shall take all administrative steps necessary to complete these tasks within 12 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 23rd 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 23, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability