

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is the only person in her household.
2. The petitioner completed a renewal of her FoodShare (FS) benefits on February 27, 2016. The petitioner verified that she was self-employed for 30 hours per month.
3. On March 17, 2016 the agency sent the petitioner a FoodShare Employment and Training Program (FSET) referral notice. This notice informed the petitioner that she had been referred to the FSET program. Effective March 1, 2016 she would have to complete 80 hours of FSET activities to maintain her FS benefits. The notice further informed her that failure to comply with the FSET requirements for more than three time limited benefit months in a 36 month period would result in a 36 month sanction of her FS benefits. The notice was mailed to the petitioner's correct address. She received this notice.
4. The petitioner enrolled in FSET on March 28, 2016. She was given credit for her self-employment for 30 hours each month. This left 50 hours of FSET to maintain her FS benefits.
5. The petitioner had a FSET appointment scheduled for April 11, 2016. She was a no call, now show for that appointment. The FSET agency sent the petitioner written notice of this appointment. The notice was sent to the petitioner's correct address.
6. The petitioner had another FSET appointment for April 26, 2016. There was an issue with her FSET worker.
7. On April 29, 2016 the petitioner dropped off job search confirmation showing that she completed 18 hours of job search in April 2016.
8. The petitioner did not complete any FSET hours after April 29, 2016.
9. The petitioner received FS benefits in March 2016, April 2016, and May 2016. She did not work or participate in FSET for a total of 80 hours in any of those three months.
10. On May 18, 2016 the agency mailed the petitioner a notice stating that her FS benefits were terminating effective June 1, 2016.
11. On May 18, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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. A person can be exempt from the program if she meets one of the seven exemptions. *FoodShare Wisconsin Handbook*, §3.17.1.5. The seven exemptions are living with a child under 18 years of age; caring for a person who cannot care for himself or herself; caring for a child under 6 who does not live in the home; physically or mentally unable to work; pregnant; had applied for or is receiving Unemployment Compensation benefits; or is taking part in an Alcohol or Substance Abuse (AODA) program. *Ibid.*, §3.17.1.5.

The petitioner testified that she was told by FSET that she had to online job search and [REDACTED] online academy. These could be completed from her home computer. She argued that she could never log on to the [REDACTED]. She was able to get into the job search component. Although she could get into job search, she only completed 18 hours of job search over 3 months. In addition, she never contacted FSET to tell them that she was unable to log in to the [REDACTED]. I have no doubt that FSET could and would have fixed her log in issue. She never attended the FSET appointments, and essentially quit participating in the program after not being able to log into the [REDACTED] [REDACTED] and only completing 18 hours of job search.

The petitioner had to complete 50 FSET hours per month in conjunction with her 30 hours of self-employment to maintain her FS eligibility. She did not do that. There is no dispute that she did not meet the 80 hours required for FSET in March, April, and May 2016. She received her full FS benefits during those three months. Thus, she has exhausted her three months of time limited FS benefits, and the agency is correctly imposing a 36 month FSET sanction.

The petitioner states that she is participating in a work program through the Department of Vocational Rehabilitation (DVR). That may qualify her for a FSET exemption. She states that she also applied for disability, and was denied, but is appealing that denial. Although I am somewhat confused because to get disability one must not be able to work and the purpose of the DVR program is to gain employment, these are two possible FSET exemptions. If the petitioner can meet an FSET exemption, she can be eligible for FS benefits. If she does not meet an exemption, she is ineligible for FS for a 36 month period. The petitioner may reapply and work with the agency for determination of whether or not she meets an FSET exemption.

CONCLUSIONS OF LAW

The agency correctly discontinued the petitioner's FS because she failed to comply with work program requirements in three months.

THEREFORE, it is

ORDERED

That 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.

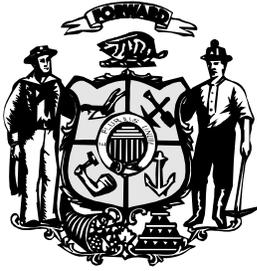
APPEAL TO COURT

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, **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 18th day of July, 2016

\s _____
Corinne Balter
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 July 18, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability