



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/174614

PRELIMINARY RECITALS

Pursuant to a petition filed May 25, 2016, under Wis. Admin. Code § HA 3.03(4) (\*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 16, 2016, at Milwaukee, Wisconsin.

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

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:

Corinne Balter
Division of Hearings and Appeals

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 January 22, 2016.

3. On February 9, 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. In February and March 2016 the agency mailed the petitioner four separate notices for four FSET enrollment appointments. These notices were mailed to the petitioner's correct address. She received these notices. She failed to attend all four FSET enrollment appointments.
5. The agency also attempted to contact the petitioner several times by telephone.
6. The petitioner received FS benefits in March 2016, April 2016, and May 2016. She did not work 80 hours in any of those three months. She worked less than 80 hours in some of the months.
7. On May 18, 2016 the agency mailed the petitioner a notice stating that her FS benefits were terminating effective June 1, 2016.
8. On May 25, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
9. The petitioner currently receives unemployment. Unemployment is an FSET exemption. As of the hearing date the petitioner's FS case was open and she was receiving FS benefits.

### **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.

In fact, the *FSET Handbook*, at section 3.5.2, specifically states in this failure to enroll situation, as follows:

In order for a non-exempt ABAWD to meet the work requirement through FSET participation and maintain ongoing FS benefits after the TLB month, s/he must be enrolled and fully participating in FSET by the 10th day of the third TLB month. The FSET worker should document in PIN comments information relating to each contact that is attempted.

The petitioner argues that she did not receive the initial FSET referral letter and that she was under the impression that the program was voluntary. These arguments are not persuasive. The FSET referral letter was sent to the petitioner's correct address. She provided that address to the agency less than one month prior to the agency sending the referral. This continues to be the petitioner's address. It is the petitioner's responsibility to obtain her mail at her correct mailing address. This testimony becomes even less credible when the petitioner later testified that she did not get the enrollment appointment notices. Again

these notices were sent to the petitioner's correct address, and it is her responsibility to obtain her mail at her correct mailing address.

The FSET agency also called the petitioner at the telephone number she provided. On at least one occasion the FSET agency informed the petitioner about the FSET program. I can find no legitimate reason for the petitioner to have failed to enroll in the FSET program. 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 currently receives unemployment benefits. This is an FSET exemption, and continues to receive FS benefits. As long as the petitioner can meet an FSET exemption, she will remain eligible for FS benefits. If she loses this exemption, and cannot meet another exemption within this 36 month period, she will again lose her FS eligibility.

### CONCLUSIONS OF LAW

The petitioner failed to meet the FS work requirement for three time-limited benefit months in a 36 month period, and thus the agency correctly discontinued FS effective June 1, 2016

**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, 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 1st day of July, 2016

---

\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 1, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability