



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

In the Matter of



**DECISION**

Case #: FWP - 175426

**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 11, 2016, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on August 9, 2016, by telephone.

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

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [Redacted], HSPC, Sr.  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
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 July 13, 2015, the Petitioner completed a renewal. (Exhibit 11, pg. 2)

3. On July 14, 2015, the agency sent the Petitioner a FoodShare Employment and Training Program Referral. (Exhibit 11, pg. 14-17)
4. The Petitioner was determined to be exempt from ABAWD requirements, from August 5, 2015 through April 27, 2016, because he was receiving unemployment benefits. (Exhibit 11, pgs. 1-4)
5. On April 27, 2016, the agency sent the Petitioner another referral letter to the FoodShare Employment and Training Program. (Exhibit 11, pgs. 18-21)
6. On May 18, 2016, the Petitioner went to the FSET office a signed an FSET employment plan. (Exhibit 12, pgs. 22-24)
7. The FSET office did not send the Petitioner an initial appointment letter until May 19, 2016, scheduling his initial appointment for that same day. (Exhibit 12, pg. 43)
8. The Petitioner signed a second plan on May 19, 2016, (Exhibit 12, pgs. 27-28) and he signed a third plan on May 27, 2016. (Exhibit 12, pgs. 25-26)
9. The Petitioner signed a fourth employment plan on June 6, 2016. (Exhibit 12, pgs. 29-30)
10. Petitioner was to complete between 6 and 9 hours per week of employment searches. (Exhibit 12, pgs. 22-30)
11. The FSET office sent the Petitioner an appointment letter on June 7, 2016 for an appointment scheduled for the day before, June 6, 2016. (Exhibit 12, pg. 52)
12. On June 17, 2016, the agency sent the Petitioner a notice indicating that his FoodShare benefits would be ending effective July 1, 2016, because he used up his three months of time limited benefits. (Exhibit 22)
13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 11, 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 the agency's contention that the Petitioner used up his time limited benefits in August 2015, May 2016, and June 2016. (See Exhibit 12, pg. 9)

However, Petitioner was exempt from ABAWD requirements in August 2015, because he was receiving unemployment benefits at that time. As such, he did not use up a time limited benefit in that month.

With regard to May 2016, the PIN comments indicate the Petitioner failed to appear for a May 4, 2016 appointment. However, the FSET office has provided no documentation to show the petitioner ever received notice of that appointment. The first appointment letter contained in the FSET packet is for an initial appointment scheduled for May 19, 2016.

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.*

Since the record provided by the FSET office shows that it caused a delay in Petitioner’s enrollment in the FSET program, there is good cause for his nonparticipation in May 2016. Accordingly, the Petitioner has not used up a TLB for that month.

For June 2016, the Petitioner indicates that he stopped complying with his job search requirements when he had received the June 17, 2016 notice that he was no longer eligible for FoodShare benefits. If Petitioner believed his benefits were being ended incorrectly, he should not have stopped his job search. Based upon the Petitioner’s admission that he did not meet the work requirement for June 2016, it is found that he used up one time limited benefit month.

Based upon all of the foregoing, it is found that the Petitioner used only one time limited benefit month. Accordingly, the agency did not correctly end the Petitioner’s FoodShare benefits effective July 1, 2016.

### CONCLUSIONS OF LAW

The agency did not correctly end the Petitioner’s time limited benefits effective July 1, 2016.

**THEREFORE, it is**

**ORDERED**

That the agency restore the Petitioner’s FoodShare benefits effective July 1, 2016, and that the agency correct the Petitioner’s FS Clock to reflect the use of only one time limited benefit month in June 2016. The agency shall complete all administrative steps to complete this task 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, **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 24th day of  
August, 2016

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Mayumi 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 August 24, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability