



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/165334

PRELIMINARY RECITALS

Pursuant to a petition filed April 10, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 05, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective April 1, 2015.

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: Kelly Kosloske, Lead ES
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. On June 11, 2014 the Department of Health Services (DHS) issued Operations Memo #14-25 which outlined Wisconsin's policy and instruction for applying Time-Limited FoodShare

Benefits (TLBs) to ABAWDs. Operations Memo #14-25, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-25amendedv3.pdf>. As explained in that Memo, effective July 1, 2014, FS applicants and members residing in Kenosha, Racine, and Walworth counties were subject to the new eligibility rules which determine if a person is an ABAWD subject to time-limited FS benefits. *Id.*

3. In July 2014 petitioner had a FS renewal. He was referred to FSET, and on July 14, 2014 the agency issued a FSET referral letter to him. See Exhibit 1.
4. On July 16, 2014 the agency issued a letter to petitioner stating that if he seeks an exemption from the FSET program, he must provide of the exemption by July 28, 2014. See Exhibit 2.
5. On August 13, 2014 the petitioner enrolled in FSET and signed an Employability Plan (EP). See Exhibit 5. His first TLB was September. Petitioner did not meet his FSET requirements for that month.
6. In October 2014 petitioner reported to the FSET agency that he was working. A request for verification was made to verify the employment, but petitioner did not provide a timely response. His FS closed for failing to verify on October 31, 2014. The agency did not use October as a TLB month because it determined he met his FSET requirements.
7. On November 11, 2014 petitioner was disenrolled from FSET because he was FS ineligible when his case closed at the end of October.
8. On November 21, 2014 petitioner provided his employment verification and his FS were reopened and prorated for the end of November. He was referred to FSET again.
9. On December 3, 2014 petitioner re-enrolled in FSET and signed an Employability Plan (EP). Exhibit 6. Petitioner did not meet his FSET requirements for that month.
10. On December 31, 2014 petitioner's FS case closed because he did not complete his six month review timely.
11. On January 22, 2015 petitioner reapplied for FS and his FS were reopened. He was referred to FSET again. The agency did not use January 2015 as a TLB month because he was given good cause.
12. On February 18, 2015 the agency issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". See Exhibit 8. The petitioner was scheduled for February 20, 2015 for his FSET meeting. Petitioner failed to make this appointment.
13. On February 23, 2015 the agency again issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". See Exhibit 9. The petitioner was scheduled for March 4, 2015 for his FSET meeting. Petitioner failed to make this appointment.
14. The agency did not use February 2015 as a TLB month because he only received partial FS in February.
15. On March 11, 2015 the agency again issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". See Exhibit 10. The petitioner was scheduled for March 16, 2015 for his FSET meeting. Petitioner failed to make this appointment.
16. On March 18, 2015 the agency issued a notice of decision to petitioner stating that his FS would end April 1, 2015 because he had used 3 months of time limited benefits without meeting a work requirement during those 3 months, determining that March 2015 was his third TLB month. See Exhibit 11.

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. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required 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.

On June 11, 2014 the Department of Health Services (DHS) issued Operations Memo #14-25 which outlined Wisconsin's policy and instruction for applying Time-Limited FoodShare Benefits (TLBs) to ABAWDs. Operations Memo #14-25, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-25amendedv3.pdf>. As explained in that Memo, effective July 1, 2014, FS applicants and members residing in Kenosha, Racine, and Walworth counties were subject to the new eligibility rules which determine if a person is an ABAWD subject to time-limited FS benefits. *Id.* Thus, petitioner was subject to these new rules when his review came up in July 2014.

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. See *FS Handbook* §3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. 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 (TLBs) in a 36-month period. *Id.*

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.

...
FS Handbook, §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
 - a. Receiving temporary or permanent disability benefits from the government or a private source;
 - 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 social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;

5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
6. Is a full-time high school student age 18 or over;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

FS Handbook, §3.17.1.5.

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.

FS Handbook, §3.17.1.7.

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FS Handbook*, §3.16.1.4. As just noted, a person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FS Handbook*, §3.17.1.17.

Petitioner did not deny his lack of participation in FSET, but was stated he was confused as to why December was counted as a TLB. He stated he was unaware that the three TLB months could be used up at any time. The agency representative testified that the 3 month TLB issue is explained at each enrollment, which petitioner underwent at least twice. It was also noticed to him in the referral letter where it states:

Time Limited FoodShare Referral

Certain adults between the ages of 18 and 49 with no minor children in the home will only get 3 months of time limited FoodShare benefits in a 36 month period, unless they meet the FoodShare work requirement.

See [Exhibit 1](#), p. 2. This is also reiterated in various other notices issued to petitioner. See [Exhibit 3, 4, 7, 8, 9, and 10](#). Petitioner has failed to show that he was exempt from meeting his FSET requirements or that he met them in the months of September, December and March. Accordingly, I must find that he has exhausted his TLBs and the agency acted correctly in terminating his FS.

The petitioner is reminded of the agency representative's closing remarks: that he can reapply for FS in July 2015 because at that time he will turn 50 and be considered Non-ABAWD and therefore not subject to TLBs or ABAWD work requirements.

CONCLUSIONS OF LAW

The agency met its burden to show that it correctly discontinued petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective April 1, 2015.

THEREFORE, it is

ORDERED

The petition for review herein 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 June, 2015

\sKelly Cochrane
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 June 1, 2015.

Racine County Department of Human Services
Division of Health Care Access and Accountability