



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/167140

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 25, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency correctly ended the Petitioner's FoodShare benefits effective June 1, 2015, because he used up his time limited benefits.

NOTE: The record was held open to allow the parties to provide additional documentation. The Petitioner provided the following:

- Exhibit 18 - Job log signed 3/20/15
Exhibit 19 - Job log signed 4/3/15
Exhibit 20- Job log signed 4/10/15
Exhibit 21- Business cards from three employers
Exhibit 22 - Call Detail Printout from RPD
Exhibit 23- application
Exhibit 24- 4/13/15 letter from Respondent regarding late paperwork and being held in custody.
Exhibit 25- application.
Exhibit 26 - application acknowledgement 4/13/15
Exhibit 27 - Warehouse application acknowledgement 4/13/15
Exhibit 28 - application
Exhibit 29 - Order for Bail / Bond dated 4/20/15

submitted a 71 page FSET packet. It has been marked as Exhibit 30.

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: Madeline Rice, Lead Economic Support Specialist  
██████████ Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ██████████) is a resident of ██████████.
2. The Petitioner applied for Foodshare benefits on or about February 16, 2015 and was approved to receive \$90.00 for February 2015, and \$194.00 per month, thereafter. (Exhibit 7)
3. On February 17, 2015, the Petitioner was referred to the FoodShare Employment and Training (FSET) program. (Exhibit 8)
4. Petitioner’s FSET clock began running in March 2015. (Exhibit 5)
5. The Petitioner became enrolled in the FSET program on March 9, 2015. (Exhibit 8; Exhibit 30, pg. 9)
6. On Friday, March 20, 2015, at about 2:30 in the afternoon, the Petitioner was arrested on an outstanding warrant. He was in custody for seven days and released on or about Thursday, March 26, 2015. (Exhibit 22; Exhibit 30, pg. 10)
7. On April 20, 2015, the Petitioner was arrested. He remained in custody until May 17, 2015, at which time he was released to GPS monitoring. The court only allowed “out” time for attending court and meeting with counsel. Petitioner’s GPS monitoring ended on June 15, 2015. (Exhibit 29; Exhibit 30, pgs. 12; testimony of Petitioner)
8. On May 19, 2015, the agency sent the Petitioner a notice, advising him that his FoodShare benefits would be ending effective June 1, 2015, because he used up the three months of his time-limited benefit. (Exhibit 9)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 10, 2015. (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 January 1, 2014. *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 an ABAWD, if that person is:

1. 18 to 49 years of age,
2. Able to work,
3. Not residing in a FoodShare household with a child under age 18, and
4. Not pregnant

Conversely, a person is considered a Non-ABAWD if that person is:

1. Under age 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*

It is undisputed that the Petitioner is an ABAWD.

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

1. Is determined unfit for employment;
2. Is receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Is regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. Is a student of higher education and is otherwise eligible for FoodShare benefits under §3.15.1.
5. Is a high school student 18 years of age or older, attending high school at least half-time;
6. Is a primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

*FSH §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.

*FSH, §13.17.1.7*

It is undisputed that the Petitioner chose to try and meet the work requirement by participating in the FSET program.

According to the Petitioner's employment plan, he was to conduct a job search 10 hours per week through ResCare Workforce Services. (Exhibit 4, pg. 33) The Petitioner was also supposed to attend "Customized Skills Training" ten hours per week at ResCare. (Id.)

The agency asserts that the Petitioner did not meet the 80 hour per month participation requirement in March, April and May 2015. However, it is not entirely clear from the record, how the Petitioner failed to

meet the 80 hours of program participation. The FSET supervisor who appeared at the hearing and testified did not have any first-hand knowledge about the Petitioner's case and was dependent upon the information in Exhibit 30.

*March 2015*

The Petitioner enrolled in the FSET program on Monday, March 9, 2015. By March 13, 2015 he had conducted ten hours of job searching. (Exhibit 4, pgs. 10 and 47-50)

For the week beginning Monday, March 16, 2015, the Petitioner put in ten hours, searching for work. (Exhibit 18)

The following week, beginning on March 23<sup>rd</sup>, the Petitioner was incarcerated at the [REDACTED] Jail. (Exhibit 22; Exhibit 30, pg. 10)

Even though he might have had good cause for non-participation the week of March 23<sup>rd</sup>, the Petitioner still managed to conduct three hours of job searching on the Friday that he was released from custody, which he reported in his job log. (Exhibit 30, pgs. 52-54) The PIN Comments indicate the Petitioner actually completed ten hours of job searching that week. (Exhibit 30, pg. 11)

The week beginning March 30, 2015, the Petitioner completed 10 hours of job searching. (Exhibit 19; Exhibit 30, pg.11)

Based upon the foregoing, it is found that the Petitioner looked for work for at least 10 hours per week in March, for a total of 40 hours.

Looking at Exhibit 30, I can find no definitive documentation from any Res Care employee who facilitated the Customized Skills Training program to show that the Petitioner was not following through with that aspect of his employment plan in March 2015. Even the PIN comments lack any information showing that the Petitioner was not participating in the Customized Skills Training as required.

It should also be noted that there is no documentation showing how long Petitioner's appointments with his FSET worker lasted, and as such, there is no way to know what portion of the 80 hours per month, that took up.

Thus, it is found that the agency has not met its burden to prove the Petitioner failed to meet the 80 hour per month participation requirement and therefore, used up one month of his time-limited benefits in March 2015.

*April 2015*

As discussed above, the week of March 30, 2015 through April 3, 2015, the Petitioner met the required 10 hours of job searching.

The week of April 6 through April 10, the Petitioner completed five hours of job searching. (Exhibit 20) There is no indication in the record that the Petitioner completed the remaining five hours, though there is documentation that the Petitioner missed one session of a "job club", because he attended a funeral on April 10, 2015. (See Exhibit 24, 2015) There is insufficient information in the record to conclude the funeral constituted good cause for the Petitioner's non-participation.

The only evidence that the Petitioner engaged in a work search the week of April 13, 2015, are four job applications dated on or about April 13, 2015. (Exhibits 25, 26, 27, 28) It is unlikely that it took Petitioner ten hours to complete those applications.

I do note, however, that there was a PIN comment that showed that the Petitioner had attended a Job Club on April 17, 2015, though it is unclear if the Job Club was in addition to, part of, or in lieu of the Customized Skills Training program.

The Petitioner was arrested on April 20, 2015 and remained in custody through May 17, 2015, at which time he was placed on GPS monitoring as a condition of bond. (Exhibit 29; testimony of Petitioner) The Petitioner was only allowed “out” time for meeting with his attorney and attending court. (Exhibit 29; Exhibit 30, pg. 12; Testimony of Petitioner) The Petitioner testified that the GPS monitoring continued through June 15, 2015.

While the Petitioner had good cause for his non-participation between April 20, 2015 and April 30, 2015, he did not have good cause for his failure to conduct 10 hours per week of job searching the weeks of April 6, 2010 and April 13, 2015.

Accordingly, it is found that the Petitioner did not meet the 80 hour per month participation requirement and therefore, used his time limited benefits in April 2015.

#### *May 2015*

During the entirety of May 2015, the Petitioner was either in custody or on GPS monitoring, with no “out” time allowed for job searching or interviews. As such, he had good cause for non-participation in the FSET program for the month of May. Indeed, beyond asking nicely, the Petitioner had little control over what the court would or would not allow as a condition of bail/bond.

It should be noted that the agency has not cited to any law to support its conclusion that the prohibitions imposed by a circuit court judge do not constitute good cause for non-participation. 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, but also states that the list is not exhaustive. *See also Ops Memo 14-27 – Amended 5/18/15.*

Based upon the foregoing, it is found that the Petitioner did not use up his time limited benefits for the month of May 2015.

**NOTE – nothing here should be read to mean that Petitioner is exempt from, or has met, ABAWD work requirements after May 31, 2015. The agency will have to review that matter and determine whether Petitioner’s time limited benefits have expired since May 31<sup>st</sup>. If they have, the agency will have to issue a new notice to the Petitioner. If Petitioner disagrees with the new notice, the Petitioner may file a NEW appeal.**

#### **CONCLUSIONS OF LAW**

The Petitioner only used his time limited benefits in April 2015. Thus, the agency incorrectly ended the Petitioner’s benefits effective June 1, 2015.

**THEREFORE, it is**

#### **ORDERED**

That the agency restore the Petitioner’s FoodShare benefits effective June 1, 2015. The agency shall take all administrative steps necessary 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, 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 10th day of September, 2015.

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\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 September 10, 2015.

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