



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/167504

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on August 20, 2015, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements.

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: Deb Bohlman

Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Fond Du Lac County.
2. Petitioner's FoodShare case was reviewed in April 2015 and informed that he was required to comply with Able Bodies Adult without Dependent (ABAWD) requirements. He was assigned to the FSET program.
3. Petitioner had an initial FSET appointment on May 5, 2015. That appointment and 5 subsequent FSET appointments were rescheduled at Petitioner's request. Petitioner ultimately enrolled with FSET on July 2, 2015.

4. Petitioner did not complete 80 hours of FSET activities in July 2015.
5. Petitioner is not exempt from FSET activities.
6. Petitioner's FoodShare benefits were discontinued effective August 1, 2015 because he had not met ABAWD requirements; i.e., Petitioner's time limited FoodShare benefits have been received for the months of May, June and July 2015.

DISCUSSION

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2*. This was implemented statewide as of 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 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.

...
FSH §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.

FSH §3.17.1.5.

There is no evidence to suggest that Petitioner is exempt from ADAWD requirements. It is apparent that transportation from North Fond du Lac where Petitioner resides and Fond du Lac where he has to participate in activities can be problematic. Nonetheless, Petitioner is currently able to bike as needed but is concerned as to what will happen in winter months. He is putting the cart before the horse with that concern; failing to participate as required in the summer months because of what transportation may not be available several months later is really just trying to justify failing to participate as required. Similarly, Petitioner maintains he is uncomfortable with computers so does not want to use them for job search or

other activities – again an effort to come up with an excuse not to participate. I conclude that the agency correctly discontinued Petitioner’s FoodShare for failing to meet ADAWD requirements.

Finally, as a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility (6.1.3.3). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;
 - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD’s 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

Petitioner needs to get a job, participate in *another* allowable work (NOT FSET) program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. He would be well-advised to contact an agency income maintenance worker to discuss ways to regain eligibility or he will remain ineligible through the 36 month period.

CONCLUSIONS OF LAW

Petitioner failed to meet the FoodShare work requirement for three time-limited benefit months in a 36 month period, and thus the agency correctly discontinued FoodShare effective August 1, 2015, under the new time limited FoodShare benefit policy for Able-Bodied Adults without Dependents.

THEREFORE, it is

ORDERED

That this appeal 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 17th day of September, 2015

\sDavid D. Fleming
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 17, 2015.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability